

AMENDED AND RESTATED CONSTRUCTION LOAN AGREEMENT

by and between

POTALA TOWER SEATTLE, LLC,
a Delaware limited liability company,

as Borrower,

and

PATH AMERICA TOWER, LP,
a Washington limited partnership,

and

PATH TOWER SEATTLE, LP
a Washington limited partnership,

as Lender

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AMENDED AND RESTATED CONSTRUCTION LOAN AGREEMENT

THIS AMENDED AND RESTATED CONSTRUCTION LOAN AGREEMENT (this “Agreement”) is made as of the [] day of [August], 2016 (the “Effective Date”), by and between POTALA TOWER SEATTLE, LLC, a Delaware limited liability company (“Borrower”), and PATH AMERICA TOWER, LP, a Washington limited partnership, and PATH TOWER SEATTLE, LP, a Washington limited partnership (collectively, “Lender”).

Recitals

WHEREAS, Borrower previously applied to Lender for a construction and permanent financing loan in the maximum principal amount of One Hundred Twenty-Two Million and No/100 Dollars (\$122,000,000.00) (the “Original Loan”) in order to finance certain costs related to the acquisition, development, and construction of improvements on that certain real property located in Seattle, Washington, as legally described herein on Exhibit A attached hereto and incorporated herein by this reference (the “Property,” and such Improvements constructed thereon, collectively the “Project”), and in connection with the Original Loan, Lender and Borrower entered into those certain loan documents, including without limitation a Construction Loan Agreement, dated [], 201[] (the “Original Loan Agreement”).

WHEREAS, on August 24, 2015, the United States Securities and Exchange Commission (“SEC”) initiated a federal securities enforcement action against Lobsang Dargey, an individual residing in the State of Washington (“Dargey”), as well as a series of corporate entities owned and/or controlled by Dargey, including without limitation Lender and Borrower (the “SEC Action”). The SEC Action has been filed in the United States District Court, Western District of Washington, Seattle Division, under Judge James L. Robart presiding (the “Court”). On October 22, 2015, Lender and Borrower were placed under the control of Michael A. Grassmueck of the Grassmueck Group in his capacity as a Court-appointed receiver in connection with the SEC Action (the “Receivership”).

WHEREAS, pursuant to the SEC Action, the Court, pursuant to that certain order dated August [], 2016 (the “Court Order”), approved, among other actions, (i) the reorganization and recapitalization of Borrower (the “Borrower Reorganization”), and (ii) the reorganization of each of Lender, including without limitation Path America KingCo LLC (“KingCo”), Lender’s general partner respectively (the “Lender Reorganization”), with each of the foregoing Borrower Reorganization and Lender Reorganization (collectively, the “Project Reorganization”) being undertaken for the express purpose of facilitating the continuation of construction and completion of the Project in order to allow realization of the Project’s original investment and related immigration goals as outlined in the SEC Action.

WHEREAS, in connection with the Project Reorganization, Binjiang Tower Corp. (“Binjiang”) and PH Seattle Tower I, LLC, a Nevada limited liability company (“Molasky”), have been approved by the Court to undertake a joint-venture pursuant to which the parties will collaboratively implement the Borrower Reorganization. In connection with the Lender Reorganization, EB5 Group, LLC, an affiliate of Molasky (“EB5 Group”), has been approved by the Court to undertake control of KingCo for purposes of continuing oversight and management of the Modified Loan (as defined below) to Borrower and supporting and prosecution of the Project’s original immigration goals as outlined in the SEC Action.

WHEREAS, in connection with the Project Reorganization and pursuant to the Court Order, the Court has ordered that the Original Loan be modified in light of the SEC Action, including without limitation amendment and restatement of this Agreement and certain other documents entered into in connection with the Original Loan in order to (i) reaffirm and clarify certain existing terms and conditions, and (ii) modify and revise certain other key terms and conditions as required by the Court

pursuant to the Project Reorganization (such reaffirmation, clarification, modification, and revision of the Original Loan, the “Modified Loan”).

NOW THEREFORE, in consideration of the foregoing premises, and in further consideration of the mutual covenants and agreements herein set forth, the parties covenant and agree to amend, restate, and replace the Original Loan Agreement in its entirety, and otherwise modify the Original Loan, as follows:

Agreement

Article I

General Information.

Section 1.1 RESERVED.

Section 1.2 Schedules and Exhibits.

The Schedules and Exhibits attached to this Agreement are incorporated herein and made a part hereof.

Section 1.3 Defined Terms.

Capitalized terms in this Agreement shall have the meanings ascribed to such terms herein or as otherwise set forth in Schedule 1.

Article II

Advances of the Loan.

Section 2.1 The Loan.

(a) Borrower agrees to borrow the Loan from Lender, and Lender agrees to lend the Loan to Borrower, subject to the terms and conditions set forth herein, in incremental advances pursuant to Section 2.3 below that will not exceed, in the aggregate, the Loan Amount. During the Loan Term, the Loan shall bear interest as provided for in the Notes and such interest shall accrue on the Outstanding Loan Amount in the manner and at the rates and amounts as set forth in Schedule 6 attached hereto and incorporated herein by this reference (the “Interest Accrual Schedule”). The Loan is not a revolving loan; amounts repaid may not be re-borrowed.

(b) Borrower and Lender agree that on the Effective Date, Lender shall advance to all funds comprising the Loan Amount that have not been previously advanced to Borrower, including without limitation any funds held by Lender or held for the benefit of Lender in any escrow or other account.

Section 2.2 Purpose; Reallocation; Revenues from Property.

The Loan shall be advanced by Lender in accordance with the terms of this Agreement to pay for a portion of the development and construction costs of the improvements on the Property and Project that are described in the Budget (the “Project Costs”), but not, in the aggregate with respect to any line item set forth in the Budget, in excess of the amount of the Loan to be disbursed for such line item, as set forth in the Budget. Where and when applicable, and notwithstanding the prior execution of the Original Loan Agreement and the other Loan Documents, funding of the Loan shall be made subordinate to and coordinated with the disbursements made under (i) any first in priority construction loan (“First Construction Loan”) from a bank or other financial lending institution (“First Lender”) with respect to said Project Costs, and (ii) any second in priority mezzanine or other secondary financing with respect to

said Project Costs (“Mezzanine Financing”). In connection with the foregoing, subordination of the Loan to any First Construction Loan and Mezzanine Financing shall be made pursuant to commercially reasonable terms, conditions, and documentation by and among Lender, Borrower, and any First Lender and Second Lender as applicable (the “Subordination Documentation”). Borrower will receive each advance of the Loan in trust for the purpose of paying only those Project Costs for which the advance is made and will utilize the funds advanced for no other purpose. With the prior approval of Lender, any Project Cost savings, actual or estimated, affecting any approved line item within the Budget, other than the interest reserve, may be reallocated by Borrower to any other line item within the Budget. Any disbursement from a contingency reserve as set forth in the Budget shall be subject to the reasonable approval of Lender as to the amount and purpose for which such disbursement will be used. Upon completion of the Improvements and the payment of all Project Costs in connection therewith, any undisbursed Loan Amount proceeds shall be disbursed to Borrower as a Project working capital reserve or to such other Project-related uses and purposes as Lender shall approve in its reasonable discretion.

Section 2.3 Draw Requests.

Subject to the requirements of any Subordination Documentation, advances shall be made not more frequently than monthly based on draw requests signed by an Authorized Signer in the form attached hereto as Schedule 2 or in another form approved by Lender. Each draw request for hard costs shall be set forth on AIA Forms G702 and G703 or another form approved by Lender, signed by the General Contractor and, if requested by Lender, approved by the Architect. Draw requests for Project Costs shall show the percentage of completion of construction and shall set forth in such detail as may be required by Lender. Each draw request shall be supported by such information and documentation (such as paid receipts, invoices, statements of accounts, lien releases, etc.) as Lender may require to assure that amounts requested are to be used to reimburse Borrower for Project Costs previously paid by Borrower or to pay Project Costs incurred by Borrower that are to be paid from proceeds of the Loan, as set forth in the Budget. In the event that the Loan is fully disbursed prior to disbursement in full of any First Construction Loan and/or any Mezzanine Financing (the “Subsequent Financing”), then Borrower covenants and agrees to use commercially reasonable efforts to request pursuant to any Subordination Documentation or other applicable intercreditor documentation that Lender be copied on all draw requests in connection with disbursements under such Subsequent Financing.

Section 2.4 Additional Terms Regarding Advances.

Advances of the Loan shall also be subject to the terms and conditions set forth in Schedule 5.

Section 2.5 Liability of Lender.

Except as may be provided for in any Subordination Documentation, Lender shall in no event be responsible or liable to any Person other than Borrower for the disbursement of or failure to disburse the Loan proceeds or any part thereof, and neither the General Contractor, Construction Consultant, nor any subcontractor, laborer or material supplier shall have any right or claim against Lender under this Agreement or the other Loan Documents.

Article III Representations and Warranties.

Borrower represents and warrants to Lender that:

Section 3.1 Organization, Power and Authority of Borrower; Loan Documents.

(a) As of the Effective Date, Borrower (i) is a limited liability company duly organized, existing and in good standing under the laws of the state in which it is organized and is duly qualified to do business and in good standing in the state in which the Property is located (if different from the state of its formation), and (ii) has the power, authority and legal right to own its property and carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents. The Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower, and the execution and delivery of, and the carrying out of the transactions contemplated by, such Loan Documents, and the performance and observance of the terms and conditions thereof, have been duly authorized by all necessary organizational action by and on behalf of Borrower. The Loan Documents to which Borrower is a party constitute the valid and legally binding obligations of Borrower and are fully enforceable against Borrower in accordance with their respective terms, except to the extent that such enforceability may be limited by laws generally affecting the enforcement of creditors' rights.

Section 3.2 Other Documents; Laws.

(a) Other than as may be provided for in any Subordination Documentation, the execution and performance of the Loan Documents to which Borrower is a party and the consummation of the transactions contemplated thereby will not conflict with, result in any breach of, or constitute a default under, the organizational documents of Borrower, or any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower or any of its properties may be bound or affected, and such actions do not and will not violate or contravene any Law to which Borrower is subject.

Section 3.3 Taxes.

Borrower has filed all federal, state, county and municipal Tax returns required to have been filed by Borrower and has paid all Taxes which have become due pursuant to such returns or pursuant to any Tax assessments received by Borrower.

Section 3.4 Legal Actions.

Except with respect to the SEC Action and subject to the terms and conditions of the Court Order, including without limitation subject to all terms, conditions and releases applicable to the Borrower Reorganization, there are no Claims or investigations by or before any court or Governmental Authority, pending, or to the best of Borrower's knowledge and belief, threatened against or affecting Borrower's business or the Property. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority affecting Borrower or the Property.

Section 3.5 Nature of Loan.

Borrower is a business or commercial organization. The Loan is being obtained solely for business or investment purposes, and will not be used for personal, family, household or agricultural purposes.

Section 3.6 Trade Names.

Borrower conducts its business solely under the name set forth in the Preamble to this Agreement, if any, and makes use of no trade names in connection therewith, unless such trade names have been previously disclosed to Lender in writing.

Section 3.7 Financial Statements.

Any financial statements prepared and/or delivered by Borrower to Lender from and after the Effective Date are true and correct in all respects, and have been prepared in accordance with sound accounting principles consistently applied, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof. For purposes of clarification, any financial or other similar statements prepared prior to the Effective Date, including without limitation any financial statements prepared by Borrower, Receiver, or any party on behalf or at the request of Borrower and/or Receiver in connection with the SEC Action and the Borrower Reorganization are expressly not included in or made a part of this Section 3.7.

Section 3.8 ERISA and Prohibited Transactions.

As of the date hereof and throughout the term of the Loan: (a) Borrower is not and will not be (i) an “employee benefit plan,” as defined in Section 3(3) of ERISA, (ii) a “governmental plan” within the meaning of Section 3(32) of ERISA, or (iii) a “plan” within the meaning of Section 4975(e) of the Code; (b) the assets of Borrower do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in Section 2510.3-101 of Title 29 of the Code of Federal Regulations; (c) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (d) Borrower will not engage in any transaction that would cause any Obligation or any action taken or to be taken hereunder (or the exercise by Lender of any of its rights under the Deed of Trust or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code. Borrower agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section as Lender may from time to time request.

Section 3.9 Compliance with Zoning and Other Requirements.

Except as disclosed in Schedule 3.9 attached hereto and incorporated herein by this reference, the anticipated use of the Property complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Property. Except as disclosed in Schedule 3.9, all use and other requirements of any Governmental Authority having jurisdiction over the Property have been satisfied or will be satisfied prior to completion of construction of the Project. Other than in connection with the SEC Action and the Court Order, or as otherwise disclosed to Lender pursuant to Schedule 3.9, there are not to the best of Borrower’s knowledge any violations of any Law that exist with respect to the Property or the Project.

Section 3.10 Plans and Specifications.

Except as disclosed in Schedule 3.10 attached hereto and incorporated herein by this reference, the Plans and Specifications are to the best of Borrower’s knowledge materially complete and adequate for the Construction of the Improvements. Except as disclosed in Schedule 3.10, the Plans and Specifications have been or are to the best of Borrower’s knowledge anticipated to be approved by all Governmental Authorities having or claiming jurisdiction over the Property and the Project and by the beneficiary of each restrictive covenant, if any, affecting the Property whose approval is required. Except as disclosed in Schedule 3.10, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will to the best of Borrower’s knowledge fully comply with all applicable Laws, including those Laws relating to access and facilities for disabled persons.

Section 3.11 Building Permits; Other Permits.

Except as disclosed in Schedule 3.11 attached hereto and incorporated herein by this reference, all building, construction and other permits necessary or required in connection with the Construction of the Improvements have been validly issued or to the best of Borrower's knowledge will be issued in a timely manner by a date sufficient to ensure commencement of construction and Completion of Construction in accordance with the Project Schedule. All required fees have been or will be paid and bonds and/or other security have been posted in connection with all permits that have been issued, and adequate amounts are included in the Budget to pay all fees and the cost of all bonds and other security in connection with permits to be issued in the future. Following the issuance thereof, all permits will remain in full force and effect.

Section 3.12 Utilities.

All utility services necessary for the Construction of the Improvements and the operation thereof for their intended purposes are available at the boundaries of the Property (or will be available upon the completion of work shown in the Plans and Specifications), including telephone service, cable television, water supply, storm and sanitary sewer facilities, natural gas and electric facilities, including cabling for telephonic and data communication, and the capacity to send and receive wireless communication.

Section 3.13 Access; Roads.

Except as disclosed on Schedule 3.13 attached hereto and incorporated herein by this reference, all roads and other accesses from any Governmental Authority necessary for the Construction of the Improvements and full utilization thereof for their intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate Governmental Authority, or have been dedicated to public use and accepted by such Governmental Authority and all necessary steps have been taken by Borrower or such Governmental Authority to assure the complete construction and installation thereof by a date sufficient to ensure the Completion of Construction of the Improvements in accordance with the Project Schedule.

Section 3.14 Other Liens.

Other than as may be provided for in the Court Order in connection with the Borrower Reorganization or otherwise, and except for (a) any First Construction Loan, (b) any Mezzanine Financing, and (c) contracts for labor, materials and services furnished or to be furnished in connection with the Project and Construction of the Improvements, Borrower has made no (and to the best of Borrower's knowledge as of the Effective Date there are no) contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Property.

Section 3.15 No Material Adverse Change.

There has been no material adverse change in any financial statements prepared and/or delivered by Borrower to Lender from and after the Effective Date, and no material additional liabilities have been incurred by Borrower from and after the Effective Date not otherwise approved in writing by Lender other than (i) any First Construction Loan, (ii) any Mezzanine Financing, and (iii) any other borrowings contemplated herein and hereunder.

Section 3.16 Defaults.

From and after the Effective Date, there is no Default or Event of Default under any of the Loan Documents, and except as disclosed in Schedule 3.16 attached hereto and incorporated herein by this reference, there is to the best of Borrower's knowledge no default or event of default under any material contract, agreement or other document related to the Construction of the Improvements or the operation thereof.

Section 3.17 Affirmation of Representations and Warranties.

Each draw request and each receipt of the funds requested thereby shall constitute an affirmation that (a) the foregoing representations and warranties of Borrower are true and correct as of the date of the draw request and, unless Lender is notified to the contrary prior to the disbursement of the advance requested, will be so on the date of the disbursement, (b) the work completed to the date of the draw request is of quality and in all other respects consistent with the Plans and Specifications, and (c) if applicable, Construction of the Improvements is proceeding in accordance with the Project Schedule.

Article IV
Affirmative Covenants and Agreements.

Section 4.1 Commencement and Completion of Construction.

From and after the Effective Date, and any subsequent date as may be provided for pursuant to the Court Order and the Project Schedule, Borrower shall recommence Construction of the Improvements and diligently prosecute the same in a good and workmanlike manner, and shall cause Construction of the Improvements to be completed in accordance with the Project Schedule and substantially in accordance with the Plans and Specifications.

Section 4.2 Approval of Construction.

Recommencement of construction of the Project and the related Improvements shall not recommence by Borrower unless and until the Plans and Specifications have been approved by Lender [and any First Construction Lender]. Additionally, Borrower shall obtain all permits, consents, and authorizations necessary to recommence Construction of the Project from all Governmental Authorities having or claiming jurisdiction over the Property and Improvements, as well as by the beneficiary of any applicable restrictive covenant, if any, whose approval is required, and by any other party whose approval is required under applicable agreements. Finally, all applicable building, construction and other permits necessary or required in connection with recommencement of Construction of the Project and the related Improvements shall have been validly issued, and all applicable fees, bonds and any other security required in connection therewith have been paid or posted.

Section 4.3 Deposits to Balance Loan.

If at any time Lender shall determine that (a) the proceeds of the First Construction Loan, any Mezzanine Financing, and the Loan remaining to be advanced for any line item within the Budget, together with any anticipated Borrower Equity that Lender determines to its satisfaction is or will be available for such item, are not or will not be sufficient to pay, in a timely manner, the amount of such line item remaining to be paid, and (b) the deficiency cannot be remedied by a reallocation of budgeted amounts pursuant to Section 2.2, then Borrower shall deposit, at [BANK] or in another bank approved by Lender, within ten (10) days from the effective date of a Notice from Lender requesting such deposit, funds in an amount equal to the deficiency. Such funds will be deposited into an account approved by

and subject to a control agreement in favor of Lender (the “Construction Reserve Account”), which shall be an interest-bearing account, with all accrued interest to become part of Borrower’s deposit. Borrower agrees that it shall include all interest and earnings on any such deposit in the Construction Reserve Account as its income, and shall be the owner of all funds on deposit in the Construction Reserve Account for federal and applicable state and local tax purposes. Lender shall have the exclusive right to manage and control all funds in the Construction Reserve Account, but Lender shall have no fiduciary duty with respect to such funds. Advances of the deposited funds will be made from time to time for the payment of deficient line item amounts, prior to the advance of proceeds of the Loan for such amounts. Advances of the deposited funds will be subject to the terms of this Agreement regarding advances of the Loan. Any account fees and charges may be deducted from the balance, if any, in Borrower’s Deposit Account. Borrower grants to Lender a security interest in the Construction Reserve Account and all such deposited funds hereafter deposited to such deposit account, and any proceeds thereof, as security for the Obligations. Such security interest shall be governed by the Uniform Commercial Code of the State, and Lender shall have available to it all of the rights and remedies available to a secured party thereunder. The Construction Reserve Account may be established and held in such name or names as Lender shall deem appropriate, including in the name of Lender. Borrower hereby constitutes and appoints Lender and any officer or agent of Lender its true and lawful attorneys-in-fact with full power of substitution to open the Construction Reserve Account and to do any and every act that Borrower might do on its own behalf to fulfill the terms of this Section 4.3. To the extent permitted by Law, Borrower hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. It is understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Notwithstanding anything to the contrary herein, this Section 4.3 shall at all times be subject to and conditioned upon the terms and conditions of any Subordination Documentation.

Section 4.4 Compliance with Laws; Encroachments.

The Improvements shall be constructed in accordance with all applicable (whether present or future) Laws. The Improvements shall be constructed entirely on the Property and shall not without legal or contractual right encroach upon any easement or right-of-way, or upon the land of others, unless expressly approved as a permitted exception in any lender’s title policy obtained by Lender. Construction of the Improvements shall occur wholly within all applicable building restriction lines and set-backs, however established and subject to any applicable variances as may be granted to the Property and the Project, and shall be in strict compliance with all applicable use or other restrictions and the provisions of any prior agreements, declarations, covenants and all applicable zoning and subdivision ordinances and regulations.

Section 4.5 Inspections; Cooperation.

Borrower shall permit representatives of Lender and any Construction Consultant to enter upon the Property, to inspect the Improvements and any and all materials to be used in connection with the Construction of the Improvements, to examine all detailed plans and shop drawings and similar materials as well as all records and books of account maintained by or on behalf of Borrower relating thereto and to discuss the affairs, finances and accounts pertaining to the Loan and the Improvements with representatives of Borrower. Borrower shall at all times cooperate and cause the General Contractor and each and every one of its subcontractors and material suppliers to cooperate with the representatives of Lender and the Construction Consultant in connection with or in aid of the performance of Lender’s functions under this Agreement. Except in the event of an emergency, Lender shall give Borrower at least twenty-four (24) hours’ notice by telephone in each instance before entering upon the Property and the Project and/or exercising any other rights granted in this Section.

Section 4.6 Contracts, Vouchers and Receipts.

Borrower shall furnish to Lender, promptly on demand, any contracts, subcontracts, bills of sale, statements, receipted vouchers or other agreements relating to the Construction of the Improvements, including any such items pursuant to which Borrower has any claim of title to any materials, fixtures or other articles delivered or to be delivered to the Property or incorporated or to be incorporated into the Improvements. Borrower shall furnish to Lender, promptly on demand, a verified written statement, in such form and detail as Lender may require, setting forth the names and addresses of all contractors, subcontractors and suppliers furnishing labor or materials in the Construction of the Improvements and showing all amounts paid for labor and materials and all items of labor and materials furnished or to be furnished for which payment has not been made and the amounts to be paid therefor.

Section 4.7 Payment and Performance of Contractual Obligations.

Borrower shall perform in a timely manner all of its obligations under the Architect's Contract, the Construction Contract, and any and all other contracts and agreements related to the Construction of the Improvements or the operation thereof, and Borrower will pay when due all bills for services or labor performed and materials supplied in connection with the Construction of the Improvements. Within thirty (30) days after the filing of any mechanic's lien or other lien or encumbrance against the Property, Borrower will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Lender's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Lender in its sole and absolute discretion, Borrower shall have the right to contest in good faith any claim, lien or encumbrance, provided that Borrower does so diligently and without prejudice to Lender or delay in completing Construction of the Improvements.

Section 4.8 Correction of Construction Defects.

Promptly following any demand by Lender, Borrower shall correct or cause the correction of any structural defects in the Improvements, any work that fails to comply with the requirements of Section 4.4 and any material departures or deviations from the Plans and Specifications not approved in writing by Lender.

Section 4.9 Insurance.

Except as may be alternatively required under any First Construction Loan or any Mezzanine Financing without duplication, and as otherwise may be provided for in any Subordination Documentation, Borrower shall maintain the following insurance at its sole cost and expense:

(a) Insurance against Casualty to the Property under a policy or policies covering such risks as are presently included in "special form" (also known as "all risk") coverage, including such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism, malicious mischief and acts of terrorism. Such insurance shall name Lender as mortgagee and loss payee. Unless otherwise agreed in writing by Lender, such insurance shall be for the full insurable value of the Property, with a deductible amount, if any, satisfactory to Lender. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The term "full insurable value" means one hundred percent (100%) of the actual replacement cost of the Property (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items).

(b) Comprehensive (also known as commercial) general liability insurance on an “occurrence” basis against claims for “personal injury” liability and liability for death, bodily injury and damage to property, products and completed operations, in limits satisfactory to Lender with respect to any one occurrence and the aggregate of all occurrences during any given annual policy period. Such insurance shall name Lender as an additional insured.

(c) Workers’ compensation insurance for all employees of Borrower in such amount as is required by Law and including employer’s liability insurance, if required by Lender.

(d) During any period of construction upon the Property, Borrower shall maintain, or cause others to maintain, builder’s risk insurance (non-reporting form) of the type customarily carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the Property.

(e) If at any time any portion of any structure on the Property is insurable against Casualty by flood and is located in a Special Flood Hazard Area under the Flood Disaster Protection Act of 1973, as amended, a flood insurance policy on the structure and Borrower owned contents in form and amount acceptable to Lender but in no amount less than the amount sufficient to meet the requirements of applicable Law as such requirements may from time to time be in effect. The flood insurance policy on contents shall be required upon completion of the structure or any unit or component thereof, or as soon thereafter as a flood insurance policy on such contents may be obtained. Loss of rental value insurance or business interruption insurance in an amount acceptable to Lender.

(f) Such other and further insurance as may be required from time to time by Lender in order to comply with regular requirements and practices of lenders in similar transactions including, if required by Lender, wind insurance and earthquake insurance, so long as any such insurance is generally available at commercially reasonable premiums as determined by Lender from time to time.

In addition to the foregoing, Borrower shall cause the General Contractor to provide and maintain comprehensive (commercial) general liability insurance and workers’ compensation insurance for all employees of the General Contractor meeting, respectively, the requirements of Subsections (b) and (c), above.

Each policy of insurance (i) shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-VIII or better and are qualified or authorized by the Laws of the State to assume the risks covered by such policy, (ii) with respect to the insurance described under the preceding Subsections (a), (d), (e) and (f), shall have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling Lender without contribution to collect any and all proceeds payable under such insurance, either as sole payee or as joint payee with Borrower, (iii) shall provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to Lender, and (iv) shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Borrower which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Borrower shall promptly pay all premiums when due on such insurance and, not less than thirty (30) days prior to the expiration dates of each such policy, Borrower will deliver to Lender acceptable evidence of insurance, such as a renewal policy or policies marked “premium paid” or other evidence satisfactory to Lender reflecting that all required insurance is current and in force. Borrower will immediately give Notice to Lender of any cancellation of, or change in, any insurance policy. Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (A) the existence, nonexistence, form or legal sufficiency thereof, (B) the solvency of any insurer, or (C) the payment of losses. Borrower may satisfy any insurance requirement hereunder by providing one or more “blanket” insurance policies, subject to

Lender's approval in each instance as to limits, coverages, forms, deductibles, inception and expiration dates, and cancellation provisions.

Section 4.10 Adjustment of Condemnation and Insurance Claims.

Borrower shall give prompt Notice to Lender of any Casualty or any Condemnation or threatened Condemnation. Lender is authorized, at its sole and absolute option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any Claim in connection therewith. In such case, Lender shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom any or all of its Expenses. However, so long as no Event of Default has occurred and Borrower is diligently pursuing its rights and remedies with respect to a Claim, Lender will obtain Borrower's written consent (which consent shall not be unreasonably withheld or delayed) before making proof of loss for or settling or compromising such Claim. Borrower agrees to diligently assert its rights and remedies with respect to each Claim and to promptly pursue the settlement and compromise of each Claim subject to Lender's approval, which approval shall not be unreasonably withheld or delayed. If, prior to the receipt by Lender of any Condemnation Award or Insurance Proceeds, the Property shall have been sold pursuant to the provisions of the Deed of Trust, Lender shall have the right to receive such funds (a) to the extent of any deficiency found to be due upon such sale with interest thereon (whether or not a deficiency judgment on the Deed of Trust shall have been sought or recovered or denied), and (b) to the extent necessary to reimburse Lender for its Expenses. If any Condemnation Awards or Insurance Proceeds are paid to Borrower, Borrower shall receive the same in trust for Lender. Within ten (10) days after Borrower's receipt of any Condemnation Awards or Insurance Proceeds Borrower shall deliver such awards or proceeds to Lender in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Lender. Borrower agrees to execute and deliver from time to time, upon the request of Lender, such further instruments or documents as may be requested by Lender to confirm the grant and assignment to Lender of any Condemnation Awards or Insurance Proceeds.

Net Proceeds must be utilized either for payment of the Obligations or for the restoration of the Property. Net Proceeds may be utilized for the restoration of the Property only if no Default shall exist and only if in the reasonable judgment of Lender (i) there has been no material adverse change in the financial viability of the construction or operation of the Improvements, (ii) the Net Proceeds, together with other funds deposited with Lender for that purpose, are sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Lender, and (iii) the restoration can be completed prior to the final maturity of the Loan and prior to the date required by any lease. Otherwise, Net Proceeds shall be utilized for payment of the Obligations.

If Net Proceeds are to be utilized for the restoration of the Property, the Net Proceeds, together with any other funds deposited with Lender for that purpose, must be deposited in an interest-bearing account approved by and subject to a control agreement in favor of Lender, which account will be assigned to Lender as additional security for the Loan. The account will be opened, managed and controlled in a manner consistent with, and subject to, the provisions of Section 4.3 governing a Borrower's Deposit Account, including those provisions permitting Lender to require Borrower to deposit funds in the event of a deficiency in the funds available to complete restoration as herein contemplated. Disbursements of funds from the account will be made in a manner consistent with, and subject to, the requirements for the closing and funding of the Loan and the terms of this Agreement regarding the disbursement of Loan proceeds.

Notwithstanding anything to the contrary herein, this Section 4.10 shall at all times be subject to and conditioned upon the terms and conditions of any Subordination Documentation.

Section 4.11 Management.

Borrower at all times shall provide for the competent and responsible management and operation of the Property. Subject to any Subordination Documentation, any management contract or contracts affecting the Property must be approved in writing by Lender prior to the execution of the same.

Section 4.12 Books and Records; Financial Statements; Tax Returns.

Borrower will keep and maintain full and accurate books and records administered in accordance with sound accounting principles, consistently applied, showing in detail the earnings and expenses of the Property and the operation thereof. Borrower will keep and maintain its books and records, including recorded data of any kind and regardless of the medium of recording, at the addresses of Borrower set forth in Section 7.6. Borrower shall permit Lender, or any Person authorized by Lender, to inspect and examine such books and records (regardless of where maintained) and all supporting vouchers and data and to make copies and extracts therefrom at all reasonable times and as often as may be requested by Lender. From and after completion of construction of the Project and the related Improvements, Borrower will furnish or cause to be furnished to Lender annual financial statements, including balance sheets and income statements, for the Project within ninety (90) days after each fiscal year-end. In addition, Borrower will furnish or cause to be furnished to Lender, with reasonable promptness, such interim financial statements of Borrower, and the Property, together with such additional information, reports or statements in connection therewith, as Lender may from time-to-time request. All financial statements must be in form and detail acceptable to Lender and must be certified as to accuracy by Borrower. Borrower shall provide, upon Lender's request and at Lender's sole cost and expense, convenient facilities for the audit and verification of any such statement.

Section 4.13 Estoppel Certificates.

Within ten (10) days after any request by Lender or a proposed assignee or purchaser of the Loan or any interest therein, Borrower shall certify in writing to Lender, or to such proposed assignee or purchaser, the then unpaid balance of the Loan and whether Borrower claims any right of defense or setoff to the payment or performance of any of the Obligations, and if Borrower claims any such right of defense or setoff, Borrower shall give a detailed written description of such claimed right.

Section 4.14 Taxes.

Borrower shall pay and discharge all Taxes prior to the date on which penalties are attached thereto unless and to the extent only that such Taxes are contested in accordance with the terms of the Deed of Trust.

Section 4.15 Lender's Rights to Pay and Perform.

If, after any required notice, Borrower fails to promptly pay or perform any of the Obligations within any applicable grace or cure periods, Lender, without Notice to or demand upon Borrower, and without waiving or releasing any Obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Borrower. Lender may enter upon the Property for that purpose and take all action thereon as Lender considers necessary or appropriate. At the option of Lender, following the occurrence of an Event of Default, Lender may apply any undisbursed Loan proceeds to the satisfaction of the conditions of the Loan Documents, irrespective of the allocation of such Loan proceeds in the Budget. Without limiting the generality of the foregoing, Lender may pay directly from the proceeds of the Loan all interest bills rendered by Lender in connection with the Loan, and following the occurrence of an Event of Default

may make advances directly to the General Contractor, the title insurance company, any subcontractor or material supplier, or to any of them jointly. The execution hereof by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan. No further direction or authorization from Borrower shall be necessary to warrant such direct advances. Each advance shall be secured by the Deed of Trust and shall satisfy the obligations of Lender hereunder to the extent of the amount of the advance. Notwithstanding anything to the contrary herein, this Section 4.15 shall at all times be subject to and conditioned upon the terms and conditions of any Subordination Documentation.

Section 4.16 Reimbursement; Interest.

If Lender shall incur any Expenses or pay any Claims by reason of the Loan or the rights and remedies provided under the Loan Documents (regardless of whether or not any of the Loan Documents expressly provide for an indemnification by Borrower against such Claims), Lender's payment of such Expenses and Claims shall constitute advances to Borrower, which shall be paid by Borrower to Lender on demand, together with interest thereon from the date incurred until paid in full at the rate of interest then applicable to the Loan under the terms of the Notes. Each advance arising out of the Environmental Agreement shall be unsecured. All other advances shall be secured by the Deed of Trust and the other Loan Documents as fully as if made to Borrower, regardless of the disposition thereof by the party or parties to whom such advance is made. Notwithstanding the foregoing, however, in any action or proceeding to foreclose the Deed of Trust or to recover or collect the Obligations, the provisions of Law governing the recovery of costs, disbursements and allowances shall prevail unaffected by this Section.

Section 4.17 Notification by Borrower.

Borrower will promptly give Notice to Lender of the occurrence of any Default or Event of Default hereunder or under any of the other Loan Documents. Borrower will also promptly give Notice to Lender of any claim of a default by Borrower, or any claim by Borrower of a default by any other party, under the Architect's Contract, the Construction Contract or any lease.

Section 4.18 Indemnification by Borrower.

Borrower agrees to indemnify Lender and to hold Lender harmless from and against, and to defend Lender by counsel approved by Lender against, any and all Claims directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including any Claim arising out of or resulting from (a) Construction of the Improvements, including any defective workmanship or materials; (b) any failure by Borrower to comply with the requirements of any Laws or to comply with any agreement that applies or pertains to the Property, including any agreement with a broker or "finder" in connection with the Loan or other financing of the Property; (c) any failure by Borrower to observe and perform any of the obligations imposed upon the landlord under any lease; (d) any other Default or Event of Default hereunder or under any of the other Loan Documents; or (e) any assertion or allegation that Lender is liable for any act or omission of Borrower or any other Person in connection with the ownership, development, financing, leasing, operation or sale of the Property; provided, however, that Borrower shall not be obligated to indemnify Lender with respect to any Claim arising solely from the gross negligence or willful misconduct of Lender. The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed, assignment or conveyance in lieu thereof and any other action by Lender to enforce the rights and remedies of Lender hereunder or under the other Loan Documents.

Section 4.19 Fees and Expenses.

Except as may otherwise be provided for in connection with the Court Order and the Project Reorganization, the Loan shall be without any cost whatsoever to Lender, and Borrower shall pay all fees, charges, costs and expenses required to satisfy the conditions of the Loan Documents. Without limitation of the foregoing, Borrower will pay, when due, and if paid by Lender will reimburse Lender on demand for, all fees and expenses of any Construction Consultant, any title insurer, recording costs, environmental engineers, appraisers, surveyors and Lender's counsel in connection with the closing, administration, modification or any "workout" of the Loan, or the enforcement of Lender's rights and remedies under any of the Loan Documents.

Section 4.20 Appraisals.

Lender may obtain from time to time an appraisal of all or any part of the Property, prepared in accordance with written instructions from Lender, from a third-party appraiser satisfactory to, and engaged directly by, Lender. The cost of one such appraisal, including any costs for internal review thereof, obtained by Lender in each calendar year and the cost of each such appraisal obtained by Lender following the occurrence of an Event of Default shall be borne by Borrower and shall be paid by Borrower on demand.

Section 4.21 Compliance with EB-5 Requirements.

Borrower acknowledges that Lender's funds are obtained through the Immigrant Investor Program (the "IIP") administered by U.S. Citizenship & Immigration Services ("USCIS") and under the authorization of [KingCo, a USCIS-designated Regional Center ("KingCo RC")]. Borrower agrees to operate its business in a manner that is designed to comply with, and to enable Lender and the KingCo RC to comply with, legal and policy requirements of the IIP, as advised by the KingCo RC. In particular, Borrower agrees:

(a) not to engage in any trade practice harmful to or which reflects unfavorably on Lender, KingCo RC, whose authorization is essential to Lender's capital, or their goodwill or any activity which constitutes deceptive or unfair competition or is in violation of any particular trade regulation or law.

(b) to deploy the \$500,000 minimum required funds invested by Lender's Limited Partners who are seeking permanent residence through the IIP (the "EB-5 Partners") only at risk in job creating activity constituting the Project, directly or indirectly, and to keep such funds invested in job creating activity until the end of conditional residence of the EB-5 Partners unless USCIS has issued policy allowing earlier liquidation;

(c) not to use any reserve accounts designed to evade at risk investment during the period of any EB-5 Partner's conditional residence;

(d) to maintain an ongoing business deploying the loaned capital to job creating activity unless and until the end of the conditional residence of the EB-5 Partners unless USCIS has issued policy allowing earlier liquidation;

(e) to follow the business plan for the Project as submitted for approval to USCIS, consulting with [KingCo RC] before implementing any changes that could be considered material; and

(f) to track, maintain records, and share data and records with Lender and [KingCo RC] concerning the Project, including the expenditure of funds, employment of workers, completion of construction, operation of facilities and enterprises.

Section 4.22 RESERVED.

Article V
Negative Covenants.

Section 5.1 Conditional Sales.

Borrower shall not incorporate in the Improvements any property acquired under a conditional sales contract or lease or as to which the vendor retains title or a security interest, without the prior written consent of Lender.

Section 5.2 Changes to Plans and Specifications.

Borrower shall not make or permit any material changes in the Plans and Specifications, including any such changes that alter, diminish or add to the work to be performed or change the design of the Improvements, without the prior written consent of Lender and under such reasonable conditions as Lender may establish.

Section 5.3 Insurance Policies and Bonds.

Borrower shall not do or permit to be done anything that would affect the coverage or indemnities provided for pursuant to the provisions of any insurance policy, performance bond, labor and material payment bond or any other bond given in connection with the Construction of the Improvements.

Article VI
Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Agreement:

Section 6.1 Payment Default.

Borrower fails to pay any Obligation under this Agreement when due, whether on the scheduled due date or upon acceleration, maturity or otherwise.

Section 6.2 Default Under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Notes or the Deed of Trust or Borrower fails to promptly pay, perform, observe or comply with any term, obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

Section 6.3 Accuracy of Information; Representations and Warranties.

Any information contained in any financial statement, schedule, report or any other document delivered by Borrower or any other Person to Lender in connection with the Loan proves at any time not

to be in all respects materially true and accurate, or Borrower, or any other Person shall have failed to state any material fact or any fact necessary to make such information not misleading, or any representation or warranty contained in this Agreement or in any other Loan Document or other document, certificate or opinion delivered to Lender by Borrower in connection with the Loan, proves at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed pursuant to the terms of this Agreement.

Section 6.4 Deposits.

Subject to any Subordination Documentation, Borrower fails to deposit funds in an account approved by and subject to a control agreement in favor of Lender, in the amount requested by Lender, pursuant to the provisions of Section 4.3 or Section 4.10, within ten (10) days from the effective date of a Notice from Lender requesting such deposit, or Borrower fails to deliver to Lender any Condemnation Awards or Insurance Proceeds within ten (10) days after Borrower's receipt thereof.

Section 6.5 Insurance Obligations.

Borrower fails to promptly perform or comply with any of the covenants contained in the Loan Documents with respect to maintaining insurance, including the covenants contained in Section 4.9.

Section 6.6 Other Obligations.

Borrower fails to promptly perform or comply with any of the Obligations set forth in this Agreement (other than those expressly described in other Sections of this Article VI), and such failure continues uncured for a period of thirty (30) days after Notice from Lender to Borrower, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Borrower commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Borrower causes such failure to be cured no later than ninety (90) days after the date of such Notice from Lender.

Section 6.7 Progress of Construction.

Construction of the Improvements is abandoned or is discontinued for a period of more than thirty (30) consecutive days.

Section 6.8 Damage to Improvements.

The Improvements are substantially damaged or destroyed by fire or other casualty and Lender determines that the Improvements cannot be restored and completed in accordance with the terms and provisions of this Agreement and the Deed of Trust, if any.

Section 6.9 Lapse of Permits or Approvals.

Except as disclosed in Schedule 6.9 attached hereto and incorporated herein by this reference, any permit, license, certificate or approval that Borrower is required to obtain with respect to the construction, operation, development, leasing or maintenance of the Improvements or the Property lapses or ceases to be in full force and effect. In the event of any disclosure pursuant to Schedule 6.9, Borrower shall be required to satisfy the requirements of this Section 6.9 with respect to the same in manner and at the time or times as may be required by any First Lender pursuant to the First Construction Loan.

Section 6.10 Completion of Construction.

Completion of Construction does not occur in accordance with the Project Schedule, or Lender determines that Completion of Construction will not occur in accordance with the Project Schedule.

Section 6.11 Mechanic's Lien.

A lien for the performance of work or the supply of materials filed against the Property, or any stop notice served on Borrower, the General Contractor or Lender, remains unsatisfied or unbonded (as may be provided for pursuant to Section 4.7 herein) for a period of thirty (30) days after the date of filing or service.

Section 6.12 Survey Matters.

Any Survey required by Lender during the period of construction shows any matter which in Lender's reasonable judgment would interfere with the Construction of the Improvements or the operation or use of the Property, and such matter is not removed within a period of thirty (30) days after Notice thereof by Lender to Borrower.

Section 6.13 General Contractor Default.

The General Contractor defaults under the Construction Contract past applicable cure periods in a manner which Lender deems to be material, and, unless otherwise agreed in writing by Lender, Borrower fails promptly to exercise its rights and remedies under the Construction Contract with respect to such default.

Section 6.14 Performance Enjoined or Prohibited.

Borrower is enjoined or prohibited from performing any of its obligations under any of the Loan Documents for a period of more than thirty (30) consecutive days.

Section 6.15 Bankruptcy.

Borrower or any guarantor files a bankruptcy petition or makes a general assignment for the benefit of creditors, or a bankruptcy petition is filed against Borrower or any guarantor and such involuntary bankruptcy petition continues undismissed for a period of sixty (60) days after the filing thereof.

Section 6.16 Appointment of Receiver, Trustee, Liquidator.

Borrower or any guarantor applies for or consents in writing to the appointment of a receiver, trustee or liquidator of Borrower, any guarantor, the Property, or all or substantially all of the other assets of Borrower or any guarantor, or an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, trustee or liquidator of Borrower, any guarantor, the Property, or all or substantially all of the other assets of Borrower or any guarantor.

Section 6.17 Judgment.

A final nonappealable judgment for the payment of money involving more than \$500,000 is entered against Borrower, or any guarantor, and Borrower or such guarantor fails to discharge the same,

or causes it to be discharged or bonded off to Lender's satisfaction, within thirty (30) days from the date of the entry of such judgment.

Section 6.18 Dissolution; Change in Business Status.

Unless the written consent of Lender is previously obtained, all or substantially all of the business assets of Borrower or any guarantor are sold, Borrower or any guarantor is dissolved, or there occurs any change in the form of business entity through which Borrower or any guarantor presently conducts its business or any merger or consolidation involving Borrower or any guarantor.

Section 6.19 Default Under Other Indebtedness.

Borrower or any guarantor fails to pay any indebtedness (other than the Loan) owed by Borrower or such guarantor to Lender when and as due and payable (whether by acceleration or otherwise).

Section 6.20 RESERVED.

Section 6.21 Material Adverse Change.

In the reasonable opinion of Lender, the prospect of payment or performance of all or any part of the Obligations has been impaired because of a material adverse change in the financial condition, results of operations, business or properties of Borrower, any guarantor or any other Person liable for the payment or performance of any of the Obligations. This includes, without limitation, Borrower's material failure to proceed with Borrower's Business Plan in accordance with EB-5 compliance obligations as set forth in Section 4.21(e).

Section 6.22 Remedies on Default.

Upon the happening of any Event of Default, and subject in all instances to any Subordination Documentation, Lender shall have the right, in addition to any other rights or remedies available to Lender under the Deed of Trust or any of the other Loan Documents or under applicable Law, to exercise any one or more of the following rights and remedies:

(a) Lender may terminate its obligation to advance any further principal of the Loan pursuant to this Agreement by Notice to Borrower.

(b) Lender may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Lender may set off the amounts due Lender under the Loan Documents against any and all accounts, credits, money, securities or other property of Borrower now or hereafter held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.

(d) Lender may enter into possession of the Property and perform any and all work and labor necessary to complete the Construction of the Improvements (whether or not in accordance with the Plans and Specifications) and to employ watchmen to protect the Property and the Improvements. All sums expended by Lender for such purposes shall be deemed to have been advanced to Borrower under the Notes and shall be secured by the Deed of Trust. For this purpose, Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution, which power is

coupled with an interest, to complete the work in the name of Borrower, and hereby empowers said attorney or attorneys, in the names of Borrower or Lender:

- (i) To use any funds of Borrower including any balance which may be held by Lender and any funds which may remain unadvanced hereunder for the purpose of completing the Construction of the Improvements, whether or not in the manner called for in the Plans and Specifications;
- (ii) To make such additions and changes and corrections to the Plans and Specifications as shall be necessary or desirable in the judgment of Lender to complete the Construction of the Improvements;
- (iii) To employ such contractors, subcontractors, agents, architects and inspectors as shall be necessary or desirable for said purpose;
- (iv) To pay, settle or compromise all existing bills and claims which are or may be liens against the Property, or may be necessary or desirable for the completion of the work or the clearance of title to the Property;
- (v) To execute all applications and certificates which may be required in the name of Borrower;
- (vi) To file for record, at Borrower's cost and expense and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Lender in its sole and absolute discretion may consider necessary or desirable to protect its security; and
- (vii) To do any and every act with respect to the development of the Property and the construction of the Improvements which Borrower may do in its own behalf.

It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. Said attorney-in-fact shall also have the power to prosecute and defend all actions or proceedings in connection with the Construction of the Improvements and to take such actions and to require such performance as Lender may deem necessary.

(e) Acceleration; Setoff. Upon an Event of Default, the Loan and the Indebtedness may, at Lender's sole option, be declared immediately due and payable, and Lender's obligations, if any, to make any advances under the Loan Documents, will, at Lender's option, immediately terminate. If any amounts are due to Borrower from Lender for any reason, Lender may set off such amounts in order to satisfy a default or any amounts due from Borrower under this Loan Agreement or any Loan Documents.

(f) RESERVED.

Section 6.23 No Release or Waiver; Remedies Cumulative and Concurrent.

Borrower shall not be relieved of any Obligation by reason of the failure of Lender to comply with any request of Borrower or of any other Person to take action to foreclose on the Property under the Deed of Trust or otherwise to enforce any provision of the Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the Property. No delay or omission of Lender to exercise any right, power or remedy accruing upon the happening of an Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or any

acquiescence therein. No delay or omission on the part of Lender to exercise any option for acceleration of the maturity of the Obligations, or for foreclosure of the Deed of Trust following any Event of Default as aforesaid, or any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of any partial payment on account of the Obligations shall constitute a waiver of any such Event of Default and each such option shall remain continuously in full force and effect. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedies provided for in the Loan Documents, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under the Loan Documents, or now or hereafter existing at Law or in equity or by statute. Every right, power and remedy given by the Loan Documents to Lender shall be concurrent and may be pursued separately, successively or together against Borrower or the Property or any part thereof, and every right, power and remedy given by the Loan Documents may be exercised from time to time as often as may be deemed expedient by Lender.

Article VII Miscellaneous.

Section 7.1 Further Assurances; Authorization to File Documents.

At any time, and from time to time, upon request by Lender, Borrower will, at Borrower's expense unless any of the following are the result of any action of gross negligence or willful misconduct of Lender, (a) correct any defect, error or omission which may be discovered in the form or content of any of the Loan Documents, and (b) make, execute, deliver and record, or cause to be made, executed, delivered and recorded, any and all further instruments, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to complete, perfect or continue and preserve the lien of the Deed of Trust. Upon any failure by Borrower to do so, Lender may make, execute and record any and all such instruments, certificates and other documents for and in the name of Borrower, all at the sole expense of Borrower. Borrower hereby appoints Lender the agent and attorney-in-fact of Borrower to do so, this appointment being coupled with an interest and being irrevocable. Without limitation of the foregoing, Borrower irrevocably authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements deemed necessary or desirable by Lender to establish or maintain the validity, perfection and priority of the security interests granted in the Deed of Trust, and Borrower ratifies any such filings made by Lender prior to the date hereof. In addition, at any time, and from time to time, upon request by Lender, Borrower will, at Borrower's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to verify Borrower's identities and backgrounds in a manner satisfactory to Lender.

Section 7.2 No Warranty by Lender.

By accepting or approving anything required to be observed, performed or fulfilled by Borrower or to be given to Lender pursuant to this Agreement, including any certificate, Survey, receipt, appraisal or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof and any such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Lender.

Section 7.3 Standard of Conduct of Lender.

Nothing contained in this Agreement or any other Loan Document shall limit the right of Lender to exercise its business judgment or to act, in the context of the granting or withholding of any advance or consent under this Agreement or any other Loan Document, in a subjective manner, whether or not

objectively reasonable under the circumstances, so long as Lender's exercise of its business judgment or action is made or undertaken in good faith. Borrower and Lender intend by the foregoing to set forth and affirm their entire understanding with respect to the standard pursuant to which Lender's duties and obligations are to be judged and the parameters within which Lender's discretion may be exercised hereunder and under the other Loan Documents. As used herein, "good faith" means honesty in fact in the conduct and transaction concerned.

Section 7.4 No Partnership.

Nothing contained in this Agreement shall be construed in a manner to create any relationship between Borrower and Lender other than the relationship of borrower and lender, Borrower and Lender shall not be considered partners or co-venturers for any purpose on account of this Agreement.

Section 7.5 Severability.

In the event any one or more of the provisions of this Agreement or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of any of the Loan Documents operates or would prospectively operate to invalidate this Agreement or any of the other Loan Documents, then and in either of those events, at the option of Lender, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 7.6 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address set forth below (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

The address and fax number of Borrower is:

POTALA TOWER SEATTLE, LLC

Fax: _____

Attn: _____

The addresses and fax numbers of Lender are:

PATH AMERICA TOWER, LP
c/o EB5 Group, LLC
100 N City Parkway, Suite 1700
Las Vegas, NV 89106
Fax: 702-732-0727
Attn: Bradley J. Sher

PATH TOWER SEATTLE, LP
c/o EB5 Group, LLC
100 N City Parkway, Suite 1700
Las Vegas, NV 89106
Fax: 702-732-0727
Attn: Bradley J. Sher

Section 7.7 Permitted Successors and Assigns; Disclosure of Information. Each and every one of the covenants, terms, provisions and conditions of this Agreement and the Loan Documents shall apply to, bind and inure to the benefit of Borrower and its respective successors and those assigns of Borrower consented to in writing by Lender, and shall apply to, bind and inure to the benefit of Lender and the endorsees, transferees, successors and assigns of Lender, and all Persons claiming under or through any of them.

(b) Borrower agrees not to transfer, assign, pledge or hypothecate any right or interest in any payment or advance due pursuant to this Agreement, or any of the other benefits of this Agreement, without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion. Any such transfer, assignment, pledge or hypothecation made or attempted by Borrower without the prior written consent of Lender shall be void and of no effect. No consent by Lender to an assignment shall be deemed to be a waiver of the requirement of prior written consent by Lender with respect to each and every further assignment and as a condition precedent to the effectiveness of such assignment.

(c) RESERVED.

Section 7.8 Modification; Waiver.

None of the terms or provisions of this Agreement may be changed, waived, modified, discharged or terminated except by instrument in writing executed by the party or parties against whom enforcement of the change, waiver, modification, discharge or termination is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 7.9 Third Parties; Benefit.

All conditions to the obligation of Lender to make advances hereunder are imposed solely and exclusively for the benefit of Lender and its assigns and no other Persons shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof and no other Person shall, under any circumstances, be deemed to be the beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender at any time in the sole and absolute exercise of its discretion. The terms and provisions of this Agreement are for the benefit of the parties hereto and,

except as herein specifically provided, no other Person shall have any right or cause of action on account thereof.

Section 7.10 Rules of Construction.

The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Agreement in its entirety. The terms “agree” and “agreements” mean and include “covenant” and “covenants.” The words “include” and “including” shall be interpreted as if followed by the words “without limitation.” The captions and headings contained in this Agreement are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Improvements or the Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles, Sections and Schedules are to the respective Articles, Sections and Schedules contained in this Agreement unless expressly indicated otherwise.

Section 7.11 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

Section 7.12 Governing Law.

This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State.

Section 7.13 Time of Essence.

Time shall be of the essence for each and every provision of this Agreement of which time is an element.

Section 7.14 Electronic Transmission of Data.

Lender and Borrower agree that certain data related to the Loan (including confidential information, documents, applications and reports) may be transmitted electronically, including transmission over the Internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their Affiliates and other Persons involved with the subject matter of this Agreement. Borrower acknowledges and agrees that (a) there are risks associated with the use of electronic transmission and that Lender does not control the method of transmittal or service providers, (b) Lender has no obligation or responsibility whatsoever and assumes no duty or obligation for the security, receipt or third party interception of any such transmission, and (c) Borrower will release, hold harmless and indemnify Lender from any claim, damage or loss, including that arising in whole or part from Lender’s strict liability or sole, comparative or contributory negligence, which is related to the electronic transmission of data.

Section 7.15 Forum.

Borrower hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State specified in the governing law section of this Agreement and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any Dispute. Borrower hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the state specified in the governing law section of this Agreement may be made by certified or registered mail, return receipt requested, directed to Borrower, as applicable, at its address for notice set forth in this Agreement, or at a subsequent address of which Lender received actual notice from Borrower, as applicable, in accordance with the notice section of this Agreement, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by Law or limit the right of Lender to bring proceedings against Borrower each in any other court or jurisdiction.

Section 7.16 USA Patriot Act Notice.

Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

Section 7.17 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Lender to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 7.18 Joint and Several Liabilities.

The liability of Borrower is joint and several with the Pledgor, to the extent of its Pledge, or an express assumption of this Loan Agreement by the Pledgor.

SIGNATURE PAGE TO AMENDED AND RESTATED LOAN AGREEMENT

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the date first above written.

BORROWER:

POTALA TOWER SEATTLE, LLC,
a Delaware limited liability company

By: _____
Its: _____

LENDER:

PATH AMERICA TOWER, LP,
a Washington limited partnership

By: Path America KingCo, LLC,
a Washington limited liability company
Its: General Partner

By: EB5 Group, LLC,
a Nevada limited liability company
Its: Managing Member

By: Bradley I. Sher
Its: Manager

PATH TOWER SEATTLE, LP,
a Washington limited partnership

By: Path America KingCo, LLC,
a Washington limited liability company
Its: General Partner

By: EB5 Group, LLC,
a Nevada limited liability company
Its: Managing Member

By: Bradley I. Sher
Its: Manager

SCHEDULE 1

DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“AAA” means the American Arbitration Association, or any successor thereof.

“Accounts Payable List” means a written summary from Borrower of all accounts paid or payable for soft costs associated with the applicable draw request identifying each such account and the invoice amount due, and shall be in form and substance acceptable to Lender. For purposes of this definition, “soft costs” includes costs and expenses of development other than those attributable to the construction of the physical Improvements, including but not limited to architect’s fees, consulting fees, management fees, abatement expenses, legal fees, testing and inspection fees, connection charges, and other similar fees and expenses.

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

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” has the meaning ascribed to such term in the preamble of this Agreement.

“Architect” means _____, its successors and permitted assigns.

“Architect’s Contract” means the agreement dated _____, [YEAR], by and between Borrower, as owner, and the Architect, as architect, and any other contract for architectural services relating to the development of the Property and/or the construction of the Improvements between Borrower and an architect, and approved in writing by Lender, as the same may be amended from time to time with the prior written approval of Lender.

“Authorized Signer” means any signer of this Agreement, acting alone, or any other representative of Borrower duly designated and authorized by Borrower to sign draw requests in a writing addressed to Lender, which writing may include a draw request in the form attached hereto as Schedule 2.

“Binjiang” has the meaning ascribed to such term in the Recitals.

“Borrower” has the meaning ascribed to such term in the preamble of this Agreement.

“Borrower Deliverables” has the meaning and use as set forth in the Notes

“Borrower’s Deposit Account” means an account established with Lender pursuant to the terms of Section 4.3.

“Borrower Equity” has the meaning and use as provided for in Schedule 5.

“Borrower Reorganization” has the meaning ascribed to such term in the Recitals.

“Budget” means the breakdown of hard costs and soft costs attached hereto as Schedule 3, as the same may be revised from time to time with the written approval of Lender.

“Business Day” means any day that is not a Saturday, Sunday or banking holiday in the State.

“Casualty” means any act or occurrence of any kind or nature that results in damage, loss or destruction to the Property and/or the Project.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

“Code” means the Internal Revenue Code of 1986, as amended.

“Co-Lender Agreement” means, with respect to the Notes that certain Co-Lender Agreement of even date herewith between Path America Tower, LP as the holder of Note 1 and Path Tower Seattle, LP as the holder of Note 2.

“Completion of Construction” means, with respect to the construction of the Improvements or any component thereof, the satisfaction of all of the conditions of Section 5.

“Condemnation” means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Construction Consultant” means a person or firm appointed or designated by Lender from time to time to inspect the progress of the Construction of the Improvements and the conformity of construction with the Plans and Specifications, the Budget and the Project Schedule, and to perform such other acts and duties for such other purposes as Lender may from time to time deem appropriate or as may be required by the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, the right of Lender to appoint and retain a Construction Consultant shall be held in abeyance and be deemed suspended for so long as and to the extent that any First Lender or Mezzanine Lender appoints, designates, or retains a construction or other consultant to perform and fulfill substantially the same purposes and functions as the role of the Construction Consultant contemplated hereunder.

“Construction Consultant Report” means a written report from the Construction Consultant due to Lender on a specified predetermined day of each month acceptable to Lender.

“Construction Contract” means the agreement dated [REDACTED], 20[REDACTED], by and between Borrower, as owner, and the General Contractor, as general contractor, and any other contract for the Construction of the Improvements between Borrower and a contractor, and approved in writing by Lender, as the same may be amended from time to time with the prior written approval of Lender.

“Construction of the Improvements” means the development of the Property and/or the construction of the Improvements in connection with the Project.

“Construction Reserve Account” has the meaning ascribed to such term in Section 4.3.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” or “Controlled” have meanings correlative thereto.

“Court” has the meaning ascribed to such term in the Recitals.

“Court Order” has the meaning ascribed to such term in the Recitals.

“Dargey” has the meaning ascribed to such term in the Recitals.

“Deed of Trust” means a Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing given by Borrower to Lender to secure the Obligations, except for Obligations arising out of the Environmental Agreement, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, the right of Lender to obtain a Deed of Trust shall be expressly conditioned on the prior written consent of any First Lender and/or Mezzanine Lender to permit Borrower to grant such Deed of Trust, including without limitation any terms and conditions required by any First Lender and/or Mezzanine Lender in connection with such consent pursuant to any Subordination Documentation or other intercreditor documentation.

“Default” means an event or circumstance that, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Agreement.

“Default Rate” has the meaning and use as set forth in the Notes.

“Dispute” has the meaning ascribed to such term in Section 8.16.

“EB5 Group” has the meaning ascribed to such term in the Recitals.

“EB-5 Partners” has the meaning ascribed to such term in Section 4.21(b).

“Effective Date” has the meaning ascribed to such term in the preamble of this Agreement.

“Environmental Agreement” means, if any, the Environmental Indemnification and Release Agreement of even date herewith by and between Borrower and Lender pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified. The Environmental Agreement is unsecured.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” means any event or circumstance specified in Article VI and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in Article VI.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Lender in making, funding,

administering or modifying the Loan, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in the Deed of Trust or any of the other Loan Documents, including attorneys’ fees, court costs, receiver’s fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

“Extended Maturity Date” has the meaning and use as set forth in the Notes.

“Extension Conditions” has the meaning and use as set forth in the Notes

“Extension Option” has the meaning and use as set forth in the Notes.

“First Construction Loan” has the meaning ascribed to such term in Section 2.2.

“First Extension Rate” has the meaning and use as provided for in Schedule 6.

“First Extension Term” means the period beginning on September 1, 2021, and ending on August 31, 2023.

“First Lender” has the meaning ascribed to such term in Section 2.2.

“Force Majeure” means strikes, lock-outs, war, civil disturbance, natural disaster, acts of terrorism or acts of God which cause a delay in Borrower’s performance of an Obligation related to the work of construction; provided, however, that (a) Borrower must give Notice to Lender within ten (10) days after the occurrence of an event which it believes to constitute Force Majeure, (b) in no event shall Force Majeure extend the time for the performance of an Obligation by more than sixty (60) days, and (c) circumstances that can be remedied or mitigated through the payment of money shall not constitute Force Majeure hereunder to the extent such remedy or mitigation is deemed reasonable by Lender in its sole discretion.

“General Contractor” means , its successors and permitted assigns.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

“IIP” has the meaning ascribed to such term in Section 4.21.

“Improvements” means all on-site and off-site improvements to the Property which comprise the Project, including without limitation development of a new mixed use facility that will house a 9-story underground parking structure with approximately 268 parking stalls, [a restaurant and wine bar], a [142-room hotel], a [339-unit residential apartment community], and a variety of amenities for the hotel guests and apartment residents to be constructed on the Property, together with all fixtures, tenant improvements and appurtenances now or later to be located on the Property and/or in such improvements.

“Interest Tolling Period” has the meaning and use as provided for in Schedule 6.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

“Interest Accrual Schedule” has the meaning ascribed to such term in Section 2.1.

“KingCo” has the meaning ascribed to such term in the Recitals.

“KingCo RC” has the meaning ascribed to such term in Section 4.21.

“Laws” means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“Lender” has the meaning ascribed to such term in the preamble of this Agreement.

“Lender Reorganization” has the meaning ascribed to such term in the Recitals.

“Loan” means the Modified Loan from Lender to Borrower, the repayment obligation in connection with which are evidenced by the Notes.

“Loan Amount” means the amount of the Modified Loan which shall not exceed [Eighty Three Million Dollars (\$83,000,000)].

“Loan Documents” means this Agreement, the Notes, any Deed of Trust and UCC-1 Financing Statement, any Environmental Agreement, the [Co-Lender Agreement], [EB5 Service Agreement], and any and all other documents which Borrower, any guarantor or any other party or parties has executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Loan Term” means the period of time (i) beginning on the earlier of (a) the date that Lender and Borrower first entered into this Agreement and the other Loan Documents, or (b) the date that Lender first advanced Loan proceeds to Borrower, and (ii) ending on the Maturity Date or the earlier of (x) any Extended Maturity Date, or (y) the sooner Prepayment of the Outstanding Loan Amount in full as provided for in the Loan Documents.

“Maturity Date” has the meaning and use as set forth in the Notes.

“Mezzanine Financing” has the meaning ascribed to such term in Section 2.2.

“Modified Loan” has the meaning ascribed to such term in the Recitals.

“Molasky” has the meaning ascribed to such term in the Recitals.

“Net Proceeds,” when used with respect to any Condemnation Awards or Insurance Proceeds, means the gross proceeds from any Condemnation or Casualty remaining after payment of all expenses, including attorneys’ fees, incurred in the collection of such gross proceeds.

“Notes” means collectively the [Amended and Restated] Promissory Notes of even date herewith (i.e. “Note A” in the amount of \$_____.00 and “Note B” in the amount of \$_____.00) in a combined amount equal to the Loan Amount, made by Borrower with Note A payable to the order of Path America Tower, LP and Note B payable to the order of Path Tower Seattle, LP, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of Section 8.6.

“Obligations” means all present and future debts, obligations and liabilities of Borrower to Lender arising pursuant to, or on account of, the provisions of this Agreement, the Notes or any of the other Loan Documents, including the obligations: (a) for Borrower to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Notes; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under the Deed of Trust or any of the other Loan Documents, together with interest thereon as provided in the Deed of Trust or such Loan Document; and (c) to perform, observe and comply with all of the terms, covenants and conditions, expressed or implied, which Borrower is required to perform, observe or comply with pursuant to the terms of the Deed of Trust or any of the other Loan Documents. Notwithstanding any language contained in the Loan Documents, the Obligations of Borrower to pay and perform under the Environmental Agreement are unsecured.

“Original Loan” has the meaning ascribed to such term in the Recitals.

“Original Loan Agreement” has the meaning ascribed to such term in the Recitals.

“Outstanding Loan Amount” has the meaning and use as provided for in Schedule 6.

“Partial Repayment” has the meaning and use as provided for in Schedule 6.

“Payoff Amount” has the meaning and use as provided for in Schedule 6.

“Plans and Specifications” means any and all plans and specifications prepared in connection with the Construction of the Improvements and approved in writing by Lender, as the same may from time to time be amended with the prior written approval of Lender.

“Prepayment” has the meaning and use as set forth in the Notes.

“Prepayment Amount” has the meaning and use as set forth in the Notes.

“Prepayment Notice” has the meaning and use as set forth in the Notes

“Project” has the meaning ascribed to such term in the Recitals.

“Project Costs” has the meaning ascribed to such term in Section 2.2.

“Project Reorganization” has the meaning ascribed to such term in the Recitals. “Person” means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

“Project Schedule” means the schedule for commencement and completion of the Construction of the Improvements attached hereto as Schedule 4, as the same may be revised from time to time with the written approval of Lender.

“Property” has the meaning ascribed to such term in the Recitals.

“Receivership” has the meaning ascribed to such term in the Recitals.

“SEC” has the meaning ascribed to such term in the Recitals.

“SEC Action” has the meaning ascribed to such term in the Recitals.

“Second Extension Rate” has the meaning and use as provided for in Schedule 6.

“Second Extension Term” means the period beginning on September 1, 2023, and ending on August 31, 2025.

“State” means the State of Washington.

“Stored Materials” means building materials or furnishings that have not yet been incorporated into the Improvements.

“Subordination Documentation” has the meaning ascribed to such term in Section 2.2.

“Subsequent Financing” has the meaning ascribed to such term in Section 2.3.

“Survey” means a map or plat of survey of the Property.

“Taxes” means all taxes and assessments whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any communities facilities or other private district on Borrower or on any of its respective properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“USCIS” has the meaning ascribed to such term in Section 4.21.

SCHEDULE 2

FORM OF DRAW REQUEST

[POTALA TOWER SEATTLE, LLC'S LETTERHEAD]

DRAW REQUEST NO. _____

TO: Path America Tower, LP

Path Tower Seattle, LP (collectively, "Lender")

LOAN NO. _____
PROJECT _____
LOCATION _____

Potala Tower Seattle, LLC ("Borrower")

In accordance with the Construction Loan Agreement in the amount of \$122,000,000.00 dated _____, _____, between Borrower and Lender, Borrower requests that \$ _____ be advanced from Loan proceeds. The proceeds should be wired to the account of _____ Account No. _____, at _____.

- | | | |
|----|-------------------------------------|----------|
| 1. | CURRENT DRAW REQUEST FOR HARD COSTS | \$ _____ |
| 2. | TOTAL DRAW REQUEST | \$ _____ |

AUTHORIZED SIGNER:

Dated: _____

SCHEDULE 3

BUDGET

[Budget to be provided]

SCHEDULE 3.9

DISCLOSURE REGARDING COMPLIANCE WITH ZONING AND OTHER REQUIREMENTS

SCHEDULE 3.10

DISCLOSURE REGARDING PLANS AND SPECIFICATIONS

SCHEDULE 3.11

DISCLOSURE REGARDING BUILDING PERMITS; OTHER PERMITS

SCHEDULE 3.13

DISCLOSURE REGARDING ACCESS; ROADS

SCHEDULE 3.16

DISCLOSURE REGARDING DEFAULTS

SCHEDULE 4

PROJECT SCHEDULE

[It is optional to add any interim dates for meeting project-specific benchmarks.]

1. Commencement.

Subject to Force Majeure, Borrower shall cause development of the Property to commence no later than _____, 20__, and shall cause construction of the Improvements to commence no later than _____, 20__.

2. Completion of Construction of All Improvements.

Subject to Force Majeure, Borrower shall cause Completion of Construction of all of the Improvements to occur no later than _____, 20__.

3. Outside Date for Completion of Construction.

Regardless of the existence or non-existence or occurrence or non-occurrence of Force Majeure, in no event shall Completion of Construction of the Improvements occur later than the earliest of (i) the date of the maturity of the Loan, or (ii) _____, 20__.

SCHEDULE 5

ADDITIONAL TERMS REGARDING ADVANCES

Other advances previously made under the Original Loan, and, in all instances subject to any Subordination Documentation, subsequent advances of the Loan, shall be subject to the following additional terms and conditions:

1. Advances Under the Budget.

As listed in the Budget: (a) the “Total Costs” are the maximum costs anticipated by Borrower for each item specified; (b) the “Total Budget” is the maximum cost anticipated by Borrower for the Construction of the Improvements and Borrower’s satisfaction of the other requirements of the Loan; (c) the “Loan Proceeds” are the maximum amount to be advanced under the Loan; and (d) “Borrower Equity” is the amount that Borrower is required to pay toward the Total Costs. Whenever Borrower is required to pay any items from Borrower Equity, Lender, at its option, may restrict or prohibit advances of the Loan for such items to the extent that Borrower Equity is sufficient to pay such amounts. After the exhaustion of Borrower Equity allocated to a given line item, Lender will advance Loan proceeds for that line item pursuant to the Budget.

2. Additional Items Required for Each Advance.

Lender shall not be obligated to make an advance of Loan proceeds until and unless the following additional items shall have been received and approved by Lender, as and to the extent required by Lender, prior to the date of the advance:

(a) If applicable, a notice of title continuation or an endorsement to the title insurance policy with respect to the Property theretofore delivered to Lender, showing that since the last preceding advance, there has been no change in the status of title and no other exception not theretofore approved by Lender, which endorsement shall have the effect of advancing the effective date of the policy to the date of the advance then being made and increasing the coverage of the policy by an amount equal to the advance then being made, if the policy does not by its terms provide automatically for such an increase.

(b) Interim acknowledgments of payment and releases of liens from all Persons who have furnished labor, materials and/or services in the development of the Property or the construction of the Improvements, covering work performed, materials supplied and services rendered through the date of the last preceding advance as required by Lender.

(c) Soil compaction test reports, bearing capacity test reports and concrete test reports.

(d) A foundation Survey and such other current Surveys as Lender may reasonably request, in each instance disclosing no violation, encroachment or other variance from applicable set-backs or other restrictions unless approved in writing by Lender.

(e) Evidence that the Improvements have not been materially damaged by fire or other Casualty unless Lender shall have received Insurance Proceeds, or satisfactory assurance that it will receive such proceeds in a timely manner pursuant to Section 4.10, sufficient in the judgment of Lender to effect a satisfactory restoration and completion of the Improvements in accordance with the terms of the Deed of Trust and this Agreement.

(f) Evidence that all work requiring inspection by any Governmental Authority having or claiming jurisdiction has been duly inspected and approved by such authority and by any rating or inspection organization, bureau, association or office having or claiming jurisdiction.

(g) Evidence, including the Construction Consultant Report, that all work completed at the time of the application for an advance has been performed in a good and workmanlike manner, that all materials and fixtures usually furnished and installed at that stage of construction have been so furnished and installed, that the Improvements can be completed in accordance with the Project Schedule, and that the balance of the Loan proceeds then held by Lender and available for advance pursuant to the terms of this Agreement, together with other funds which Lender determines to be available to Borrower for such purpose, are and will be sufficient to pay the cost of such completion.

3. Conditions Precedent to All Advances.

Lender shall not be obligated to make an advance of Loan proceeds unless the following additional conditions shall have been satisfied or waived in writing by Lender as of the date of each advance:

(a) No lien for the performance of work or supplying of labor, materials or services shall have been filed against the Property, and no stop notice shall have been served on Borrower, the General Contractor or Lender, that remains unsatisfied or unbonded.

(b) No condition or situation shall exist at the Property which, in the reasonable determination of Lender, constitutes a danger to or impairment of the Property or presents a danger or hazard to the public.

(c) The representations and warranties made in Article III shall be materially true and correct on and as of the date of the advance with the same effect as if made on such date.

(d) All material terms and conditions of the Loan Documents required to be met as of the date of the applicable advance shall have been met to the satisfaction of Lender.

(e) RESERVED.

(f) No Default or Event of Default shall have occurred and be continuing.

4. Advances for Hard Costs.

Lender shall make periodic advances for hard costs as construction progresses. Each advance shall be equal to Borrower's total costs as reflected in the applicable draw request. Lender shall not be obligated to make the final advance of the Loan for hard costs unless the following additional conditions shall have been satisfied, to the extent required by Lender:

(a) The Construction Consultant and the Architect shall have certified to Lender that construction has been completed in a good and workmanlike manner, in accordance with applicable requirements of all Governmental Authorities and substantially in accordance with the Plans and Specifications;

(b) To the extent required by applicable Governmental Authorities for the use and occupancy of the Improvements, certificates of occupancy and other applicable permits and releases shall have been issued with respect to the Improvements and copies thereof have been furnished to Lender;

(c) Lender shall have received a satisfactory as-built Survey showing the location of the Improvements;

(d) Lender shall have received a satisfactory final affidavit from the General Contractor and full and complete releases of lien from the General Contractor and each subcontractor of and supplier to the General Contractor with respect to work performed and/on materials supplied in the construction of the Improvements;

(e) Lender shall have received a satisfactory set of as-built plans and specifications for the Improvements;

(f) A valid notice of completion shall have been recorded;

(g) Lender shall have received a satisfactory endorsement to its title insurance policy; and

(h) All other terms and conditions of this Agreement and the other Loan Documents required to be met as of the date of the final advance of the Loan for hard costs shall have been met to the satisfaction of Lender.

5. Advances for Stored Materials.

No advances will be made for Stored Materials unless (a) Borrower has good title to the Stored Materials and has furnished satisfactory evidence of such title to Lender, to the extent required by Lender, (b) the Stored Materials are components in a form ready for incorporation into the Improvements and will be so incorporated within a period of fifteen (15) days from the date of the advance for the Stored Materials, (c) the Stored Materials are in Borrower's possession and are satisfactorily stored on the Property or at such other location as Lender may approve, in each case with adequate safeguards to prevent commingling with materials for other projects, (d) the Stored Materials are protected and insured against loss, theft and damage in a manner and amount satisfactory to Lender, (e) the Stored Materials have been paid for in full or will be paid for in full from the funds to be advanced, (f) Lender has or will have upon the payment for the Stored Materials from the advanced funds a perfected, first priority security interest in the Stored Materials, (g) all lien rights and claims of the supplier have been released or will be released upon payment with the advanced funds, and (h) following the advance for the Stored Materials, the aggregate amount of advances for Stored Materials that have not yet been incorporated into the Improvements will not exceed [REDACTED] Dollars (\$ [REDACTED]).

6. Account for Funding Advances.

Subject to Lender's right to advance Loan proceeds as provided in this Agreement, Lender may make advances into Borrower's account no. [REDACTED] maintained with [REDACTED]. This account shall be used solely for the payment of costs and other purposes associated with the Construction of the Improvements, the Property and/or the Loan, and shall not be used for any other purpose. Borrower hereby irrevocably authorizes Lender to deposit any advance to the credit of Borrower in that account, by wire transfer in accordance with the following instructions:

SCHEDULE 6

INTEREST ACCRUAL SCHEDULE

Pursuant to Section 2.1 of this Agreement, interest on the Loan shall accrue on the aggregate, outstanding, and unpaid Loan Amount as advanced or disbursed to Borrower from time-to-time during the Loan Term (the "Outstanding Loan Amount") at the times and in the manner as prescribed herein below:

Pre-Tolling Period:

Interest on the Outstanding Loan Amount advanced or disbursed to Borrower through August 22, 2015, shall be deemed accrued in the amount as calculated and set forth in the following disbursement and accrued interest schedule:

[Insert schedule of all disbursements made up to Pre-Tolling Date with applicable interest accrual calculation.]

Tolling Period:

From and after August 23, 2015, through August 31, 2016, the Loan shall not bear or otherwise incur interest of any type or amount, and no such interest shall accrue or otherwise be due and payable on the Outstanding Loan Amount during such period (the "Interest Tolling Period").

Post-Tolling Period:

Following expiration of the Interest Tolling Period, interest shall accrue on the Loan from and after September 1, 2016, through the Maturity at the rate of 0.70% per annum based on the Outstanding Loan Amount.

Extension Periods:

In the event of exercise by Borrower of any Extension Option, Interest shall accrue on the Loan based on the Outstanding Loan Amount at the rate of (i) 2.75% per annum during the First Extension Term (the "First Extension Rate"), and (ii) 4.50% per annum during the Second Extension Term (the "Second Extension Rate").

Partial Repayment:

In the event that Borrower pays off a portion of the Outstanding Loan Amount pursuant to a Prepayment as provided for in this Agreement and in accordance with the requirements, terms, and conditions set forth in the Notes (a "Partial Repayment"), then interest shall accrue on the remaining Outstanding Loan Amount (i.e., less the Partial Repayment amount) at the First Extension Rate and/or the Second Extension Rate, as applicable.

Default Interest:

During the Loan Term:

Pursuant to any Event of Default prior to the Maturity Date (or any Extended Maturity Date as applicable), interest shall accrue on the Outstanding Loan Amount at the Default Rate from and after the date of such Event of Default and shall continue for so long as such Event of Default remains outstanding and uncured, or until satisfaction in full of such Event of Default pursuant to the exercise by Lender of one or more rights and remedies as provided for in the Loan Documents.

Upon the Maturity Date or Any Extended Maturity Date:

In the event of any failure by Borrower on or before expiration of the Maturity Date (or any Extended Maturity Date as applicable) to repay in full the Outstanding Loan Amount, along with all accrued interest and other costs and expenses as provided for herein and in the other Loan Documents (collectively, the "Payoff Amount"), then from and after expiration of the Maturity Date (or any Extended Maturity Date as applicable), interest shall accrue on the Payoff Amount at the Default Rate until all sums and amounts due from Borrower under the Loan Documents have been satisfied in full, including without limitation pursuant to the exercise by Lender of one or more rights and remedies as provided for in the Loan Documents.

SCHEDULE 6.9

DISCLOSURE REGARDING LAPSE OF PERMITS OR APPROVALS

EXHIBIT A

LEGAL DESCRIPTION

LOTS 3 AND 4, BLOCK J, BELLS 5TH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 191, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 52280 FOR WIDENING FORTH AVENUE, AS PROVIDED BY ORDINANCE NUMBER 13766 OF THE CITY OF SEATTLE.