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787 Seventh Avenue  
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Attention: Aviva Yakren, Esq.

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Rhonda Francis Summit County Recorder

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By COTTONWOOD TITLE INSURANCE AGENCY, INC.

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**SUBORDINATION AND INTERCREDITOR AGREEMENT**

## SUBORDINATION AND INTERCREDITOR AGREEMENT

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (this “**Agreement**”), dated as of September 8, 2023, is made by and between **UTAH DEPARTMENT OF WORKFORCE SERVICES HOUSING AND COMMUNITY DEVELOPMENT DIVISION, OLENE WALKER HOUSING LOAN FUND** (together with its successors and assigns, collectively, “**Junior Lender**”), and **GOLDMAN SACHS BANK USA**, a New York State chartered bank, as initial funding lender (together with any other person or entity that may become the legal holder of the Senior Note (as hereinafter defined), “**Senior Lender**”), and acknowledged by **JF ENGINEHOUSE PARTNERS, LLC**, a Utah limited liability company (“**Borrower**”).

### **RECITALS:**

A. Park City Municipal Corporation, a Utah municipal corporation (the “**Landlord**”), is the legal owner of the Property (as hereinafter defined) and pursuant to that certain Lease Agreement, dated as of the date hereof, between the Landlord and Borrower, Borrower is the holder of a leasehold interest in the Property.

B. Borrower has applied to the Utah Housing Corporation (“**Governmental Lender**”), for a loan (the “**Senior Loan**”) for the acquisition, construction, development, equipping and/or operation of a 123-unit multifamily residential project located at 1875 Homestake Road, Park City, Utah 84060, known or to be known as Enginehouse Apartments (the “**Property**”).

C. The Senior Loan is evidenced by that certain Promissory Note, dated as of the date hereof, in the maximum principal amount of \$27,000,000 made by Borrower payable to the order of Governmental Lender (as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended, amended and restated, and supplemented, the “**Senior Note**”) and that certain Borrower Loan Agreement, dated as of September 1, 2023, by and between Borrower and Governmental Lender (the “**Borrower Loan Agreement**”).

D. The Senior Loan is secured by, among other things, that certain Construction Leasehold Deed of Trust, With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof, executed by Borrower for the benefit of Governmental Lender (as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended, amended and restated, and supplemented, “**Senior Security Instrument**”), which Senior Security Instrument recorded concurrently herewith in Summit County, Utah (“**Official Records**”) encumbers the Property.

E. Borrower requested that Senior Lender enter into that certain Funding Loan Agreement, dated as of September 1, 2023, by and among Governmental Lender, Senior Lender and U.S. Bank Trust Company, National Association, a national banking association, as fiscal agent, pursuant to which Senior Lender will make a loan to Governmental Lender (the “**Funding**

**Loan**”), the proceeds of which will be used to make the Senior Loan to Borrower pursuant to the Borrower Loan Agreement.

F. The Senior Note, the Senior Security Instrument and the Borrower Loan Agreement have each been assigned by Governmental Lender to Senior Lender, to secure the Funding Loan. The Borrower and Senior Lender have entered into that certain Construction Disbursement Agreement, dated as of the date hereof (the “**Construction Disbursement Agreement**”), regarding the manner in which the improvements at the Property will be completed and paid for.

G. Citibank, N.A., a national banking association, and its successors and/or assigns (“**Permanent Funding Lender**”), has entered into a Forward Purchase Agreement (the “**Forward Purchase Agreement**”), whereby Permanent Funding Lender has committed to purchase the Funding Loan from Senior Lender on the Conversion Date (as defined in the Forward Purchase Agreement), subject to the satisfaction of the Conditions to Conversion (as defined in the Construction Disbursement Agreement) set forth in the Forward Purchase Agreement on or before the Maturity Date (as defined in the Construction Disbursement Agreement).

H. If the Conditions to Conversion are satisfied on or before the Termination Date as provided for in the Forward Purchase Agreement, the Senior Loan will convert on the Conversion Date and, on such Conversion Date, the Senior Lender shall assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note and the Senior Security Instrument will be amended and restated, and thereafter assigned to the Senior Lender (the “**Conversion**”).

I. Upon Conversion, the Funding Lender shall have the right to amend and restate the Senior Note and the Senior Mortgage, and the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents, without notice to or the consent or joinder of the Junior Lender.

J. Junior Lender is making a loan to Borrower in the original principal amount of \$967,252 (the “**Junior Loan**”), which Junior Loan is evidenced by a certain Trust Deed Note, dated on or around the Closing Date, made by Borrower to Junior Lender (the “**Junior Note**”), and secured by that certain Trust Deed with Assignment of Rents (the “**Junior Security Instrument**”), to be recorded substantially concurrently herewith. In connection with the Junior Loan, Borrower shall execute that certain Deed Restriction (the “**Junior Deed Restriction**”) which shall be recorded substantially concurrently herewith; and

K. As a condition to the making of the Senior Loan, Governmental Lender, Funding Lender and Senior Lender require that Junior Lender execute and deliver this Agreement prior to the making of the Junior Loan and the granting of the Junior Security Instrument by Borrower.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the making of the Senior Loan and to induce Senior Lender to consent to the Junior Loan and the Junior Security Instrument, Junior Lender hereby agrees as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings ascribed thereto in the Senior Security Instrument. As used in this Agreement, the terms set forth below shall have the respective meanings indicated:

*"Bankruptcy Proceeding"* means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

*"Casualty"* means the occurrence of damage to or loss of any of the Property by fire or other casualty.

*"Condemnation"* means any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Property, whether direct or indirect.

*"Continuing Disclosure Agreement"* means that certain Continuing Disclosure Agreement, to be executed by Borrower and Permanent Funding Lender in connection with Conversion, as amended, supplemented or restated from time to time.

*"Enforcement Action"* means any exercise of any of Junior Lender's remedies under the Junior Security Instrument or any of the other Junior Loan Documents, including, without limitation, any of the following: (i) the acceleration of all or any part of the Junior Indebtedness, (ii) the advertising of or commencement of any foreclosure or trustee's sale proceedings, (iii) the exercise of any power of sale, (iv) the acceptance of a deed or assignment in lieu of foreclosure or sale, (v) the collecting of Rents, (vi) the obtaining of or seeking of the appointment of a receiver, (vii) the seeking of default interest, (viii) the taking of possession or control of any of the Property, (ix) the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Junior Note or any other of the Junior Loan Documents, (x) the exercising of any banker's lien or rights of set-off or recoupment, or (xi) the taking of any other enforcement action against Borrower, any other party liable for any of the Junior Indebtedness or obligated under any of the Junior Loan Documents, or the Property.

*"Enforcement Action Notice"* means a written notice from Junior Lender to Senior Lender, given following a Junior Loan Default and the expiration of any notice or cure periods provided for such Junior Loan Default in the Junior Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by Junior Lender.

*"Funding Lender"* means (i) prior to Conversion, Senior Lender and (ii) from and after Conversion, Permanent Funding Lender.

*"Guarantor"* means (i) prior to Conversion, F4 Holdings, LLC, a Utah limited liability company, and (ii) from and after Conversion, F4 Holdings, LLC, a Utah limited liability company, and/or any other person or entity which may hereafter become a guarantor of any of the Borrower's obligations under the Senior Loan.

*"Guaranty"* means, collectively, (i) prior to Conversion, that certain Completion Guaranty, dated as of the date hereof, by Guarantor for the benefit of Initial Funding Lender, and

that certain Payment and Non-Recourse Carve-Out Guaranty, dated as of the date hereof, by Guarantor for the benefit of Initial Funding Lender, and (ii) from and after the Conversion, the Exceptions to Non-Recourse Guaranty, to be entered into as of the Conversion Date, by Guarantor for the benefit of the Beneficiary Parties (as defined therein).

*“Junior Indebtedness”* means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Junior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

*“Junior Loan Default”* means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Junior Security Instrument.

*“Junior Loan Documents”* means, collectively, the Junior Note, the Junior Security Instrument, the Junior Deed Restriction, and all other documents evidencing, securing or delivered in connection with the Junior Loan, all of which are listed on Exhibit B attached hereto, together with such modifications, amendments and supplements thereto as are approved in writing by Senior Lender prior to their execution.

*“Junior Security Instrument”* means that certain Trust Deed with Assignment of Rents, dated as of the date hereof, made by Borrower for the benefit of Junior Lender, which shall be recorded substantially concurrently herewith, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented upon receipt of the consent of Senior Lender.

*“Loan Agreement”* means (i) prior to Conversion, the Borrower Loan Agreement and that certain Construction Disbursement Agreement, dated as of the date hereof, by and between Borrower and Senior Lender relating to the Senior Loan and (ii) from and after Conversion, the Borrower Loan Agreement and/or the Loan Covenant Agreement.

*“Loan Covenant Agreement”* means that certain Loan Covenant Agreement, to be entered into between Borrower and Permanent Funding Lender at Conversion.

*“Loss Proceeds”* means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

*“Property”* means (i) the land and improvements known or to be known as Enginehouse Apartments, located at 1875 Homestake Road, Park City, Utah 84060, which Property is more particularly described on Exhibit A attached hereto, and (ii) all furniture, fixtures and equipment located at such apartments and other property, accounts, deposits and rights and interests of Borrower encumbered by the Senior Security Instrument and/or the other Senior Loan Documents.

*“Replacement Reserve Agreement”* means that certain Replacement Reserve Agreement, to be executed by Borrower and Permanent Funding Lender in connection with Conversion, as amended, supplemented or restated from time to time.

*“Senior Indebtedness”* means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Senior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

*“Senior Loan Default”* means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Security Instrument.

*“Senior Loan Documents”* means, collectively, (i) prior to Conversion, the Senior Security Instrument, the Senior Note, the Borrower Loan Agreement, the Construction Disbursement Agreement, the Guaranty and all of the other documents, instruments and agreements that constitute “Borrower Loan Documents” (as defined in the Construction Disbursement Agreement), and (ii) from and after Conversion, the Senior Security Instrument, the Senior Note, the Borrower Loan Agreement, the Loan Covenant Agreement, the Continuing Disclosure Agreement, the Guaranty, the Replacement Reserve Agreement, the Forward Purchase Agreement, and all other documents now or hereafter evidencing, securing or otherwise executed in connection with the Senior Loan, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented in accordance with the provisions of this Agreement.

**2. Junior Loan and Junior Loan Documents are Subordinate; Acts by Senior Lender do not Affect Subordination.**

(a) Junior Lender hereby covenants and agrees on behalf of itself and its successors and permitted assigns that the Junior Indebtedness is and shall at all times continue to be, subordinate, subject and inferior (in payment and priority) to the prior payment in full of the Senior Indebtedness, and that the liens, rights, payment interests, priority interests and security interests granted to Junior Lender in connection with the Junior Loan and under the Junior Loan Documents are, and are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof.

(b) Except as expressly set forth herein, repayment of the Junior Indebtedness, is and shall be postponed and subordinated to repayment in full of the Senior Loan. Prior to a Senior Loan Default (regardless of whether such Senior Loan Default occurs prior to or during the pendency of a Bankruptcy Proceeding), Junior Lender shall be entitled to receive and retain payments made pursuant to and in accordance with the terms of the Junior Loan Documents; provided, however, that no such payment is made more than ten (10) days in advance of the due date thereof. Junior Lender agrees that from and after such time as it has received from either Senior Lender or Borrower written notice that a Senior Loan Default then exists (which has not been expressly waived in writing by Senior Lender) or otherwise has actual knowledge of such a Senior Loan Default, Junior Lender shall not receive or accept any payments under the Junior Loan. If (i) Junior Lender receives any payment, property, or asset of any kind or in any form on account of the Junior Indebtedness (including, without limitation, any proceeds from any

Enforcement Action) after a Senior Loan Default of which Junior Lender has actual knowledge or has been given notice of, or (ii) Junior Lender receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Senior Lender. Junior Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Senior Lender. Senior Lender shall apply any payment, asset, or property so received from Junior Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender shall determine in its sole and absolute discretion.

(c) Without limiting the complete subordination of the Junior Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness shall first be paid in full in cash before Junior Lender shall be entitled to receive any payment or other distribution on account of or in respect of the Junior Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Junior Lender would be entitled but for this Agreement (whether in cash, property, or other assets) shall be made to Senior Lender.

(d) The subordination of the Junior Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

(e) The subordination of the Junior Loan Documents and of the Junior Indebtedness shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Security Instrument and other Senior Loan Documents and of the Junior Security Instrument and other Junior Loan Documents, and (ii) the availability of any collateral to Senior Lender, including the availability of any collateral other than the Property.

(f) By reason of, and without in any way limiting, the full subordination of the Junior Indebtedness and the Junior Loan Documents provided for in this Agreement, all rights and claims of Junior Lender under the Junior Security Instrument or under the Junior Loan Documents in or to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of Senior Lender under the Senior Loan Documents in and to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto.

(g) If Junior Lender, by indemnification, subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Junior Indebtedness and the Junior Loan Documents are subordinate pursuant to this Agreement.

(h) Intentionally omitted.

(i) Junior Lender hereby acknowledges and agrees that, subject to the provisions herein, Senior Lender may, without the consent or approval of Junior Lender, agree with Borrower to extend, consolidate, modify, increase or amend any or all the Senior Loan Documents and otherwise act or fail to act with respect to any matter set forth in any Senior Loan Document (including, without limitation, the exercise of any rights or remedies, waiver, forbearance or delay in enforcing any rights or remedies, the declaration of acceleration, the declaration of defaults or events of default, the release, in whole or in part, of any collateral or other property, and any consent, approval or waiver), and all such extensions, consolidations, modifications, amendments acts and omissions shall not release, impair or otherwise affect Junior Lender's obligations and agreements hereunder. Notwithstanding the foregoing or any contrary provision of this Agreement or the Senior Loan Documents, Senior Lender will not, without Junior Lender's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed: (i) shorten the term of the Senior Loan or the maturity date of the Senior Indebtedness, (ii) increase the principal amount of the Senior Note or the Senior Indebtedness to an amount exceeding the Maximum Permanent Period Amount (as defined in the Forward Purchase Agreement) other than increases pursuant to protective advances made by Senior Lender, or (iii) increase the interest rate payable under the Senior Note or the Senior Loan Documents other than the increase of the interest rate to the Underwritten Rate or to the Default Rate (each such terms are defined in the Forward Purchase Agreement and/or the Senior Note).

### **3. Junior Lender Agreements.**

(a) Without the prior written consent of Senior Lender in each instance, Junior Lender shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Junior Loan Documents that has the effect of (1) changing the term and/or the maturity date of the Junior Loan, (2) increasing the principal amount of the Junior Note or the Junior Indebtedness other than increases pursuant to protective advances made by Junior Lender; (3) increasing the interest rate payable under the Junior Note or the Junior Loan Documents, or (4) otherwise materially modifying the rights and obligations of Borrower under the Junior Loan Documents, or (ii) pledge, assign, transfer, convey, or sell any interest in the Junior Indebtedness or any of the Junior Loan Documents, except as provided herein; or (iii) accept any payment on account of the Junior Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than ten (10) days prior to the due date thereof; or (iv) take any action which has the effect of increasing the



Junior Indebtedness. Regardless of any contrary provision in the Junior Loan Documents, Junior Lender shall not collect payments for the purpose of escrowing for any cost or expense related to the Property or for any portion of the Junior Indebtedness.

(b) Junior Lender hereby agrees that Senior Lender may, at its option (but without any obligation to do so), at any time (including during the pendency of a Bankruptcy Proceeding), purchase the Junior Loan at par (and without liability for any prepayment premiums or liquidated damages set forth in the Junior Loan Documents). Such transfer and assignment of the Junior Loan shall be without representation or recourse, except that Junior Lender shall represent that it is the sole holder of the Junior Loan, that it has authority to assign and convey the Junior Loan Documents, that, to the best of its knowledge, there are no defaults or breaches under the Junior Loan Documents, and as to the total amount then outstanding under the Junior Loan. Notwithstanding any contrary provision in the Junior Loan Documents, Senior Lender shall have the right, but shall not have any obligation, to cure any Junior Loan Default until ninety (90) days following Senior Lender's receipt of an Enforcement Action Notice given by Junior Lender as a consequence of the Junior Loan Default. Senior Lender shall not be subrogated to the rights of Junior Lender under the Junior Loan Documents by reason of Senior Lender having cured any Junior Loan Default. However, Junior Lender acknowledges that all amounts advanced or expended by Senior Lender to cure a Junior Loan Default shall be added to and become a part of the Senior Indebtedness pursuant to the terms of the Senior Security Instrument.

(c) Senior Lender shall have all approval, consent and oversight rights in connection with any insurance claims relating to the Property, any decisions regarding the use of insurance proceeds after a casualty loss or condemnation awards, the hiring or firing of property managers, and Junior Lender shall have no right to object to any such action or approval taken by Senior Lender and shall consent thereto and be bound thereby.

(d) Junior Lender agrees that in any action commenced to enforce the obligation of Borrower to pay any portion of the Junior Indebtedness, the judgment shall not be enforceable personally against Borrower or Borrower's assets, and the recourse of Junior Lender for the collection of the Junior Indebtedness shall be limited to actions against the Property and the rents, profits, issues, products, and income from the Property.

(e) Junior Lender shall not commence or join with any other creditor, other than Senior Lender, in commencing any Bankruptcy Proceeding involving Borrower, and Junior Lender shall not initiate and shall not be a party to any action, motion or request, in a Bankruptcy Proceeding involving any other person or entity, which seeks the consolidation of some or all of the assets of Borrower into such Bankruptcy Proceeding, unless such action, motion or request is initiated or joined by Senior Lender. In the event of any Bankruptcy Proceeding relating to Borrower or the Property or, in the event of any Bankruptcy Proceeding relating to any other person or entity into which (notwithstanding the covenant in the first sentence of this clause) the assets or interests of Borrower are

consolidated, then in either event, the Senior Loan shall first be paid in full before Junior Lender shall be entitled to receive and retain any payment or distribution in respect to the Junior Loan. Junior Lender agrees that (i) Senior Lender shall receive all payments and distributions of every kind or character in respect of the Junior Loan to which Junior Lender would otherwise be entitled, but for the subordination provisions of this Agreement (including without limitation, any payments or distributions during the pendency of a Bankruptcy Proceeding involving Borrower or the Property), and (ii) the subordination of the Junior Loan and the Junior Loan Documents shall not be affected in any way by Senior Lender electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim. In addition, Junior Lender hereby covenants and agrees that, in connection with a Bankruptcy Proceeding involving Borrower, neither Junior Lender nor any of its affiliates shall (i) make or participate in a loan facility to or for the benefit of Borrower on a basis that is senior to or pari passu with the liens and interests held by Senior Lender pursuant to the Senior Loan Documents, (ii) not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan, and (iii) not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings. Junior Lender shall execute and deliver to Senior Lender assignments or other instruments as may be reasonably requested by Senior Lender with respect to any or all of the Junior Loan Documents, and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to any of the Junior Loan Documents to Junior Lender.

(f) Junior Lender covenants and agrees that the effectiveness of this Agreement and the rights of Senior Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Loan, by any delay, forbearance, failure, neglect or refusal of Senior Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Loan Documents or any other security which may have been given or may hereafter be given for the Senior Loan, by any waiver or failure to exercise any right or remedy under the Senior Loan Documents, or by any other act or failure to act by Senior Lender. Junior Lender acknowledges that Senior Lender, at its sole option, may release all or any portion of the Property from the lien of the Senior Security Instrument, and may release or waive any guaranty, surety or indemnity providing additional collateral to Senior Lender, and Junior Lender hereby waives any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Property by Senior Lender, to require the separate sales of any portion of the Property or to require Senior Lender to exhaust its remedies against any portion of the Property or any other collateral before proceeding against any other portion of the Property or other collateral (including guarantees) for the Senior Loan. Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Junior Lender. At any time or from time to time and any number of times, without notice to Junior Lender and without affecting the liability of Junior Lender, but subject to the provisions of Section 2(i) above, (a) the time for payment of the Senior Indebtedness may be

extended or the Senior Indebtedness may be renewed in whole or in part; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Senior Loan Documents, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Indebtedness may be accelerated as provided in the Senior Loan Documents; (d) any Senior Loan Document may be modified or amended by Senior Lender and Borrower in any respect, including, but not limited to, an increase in the principal amount; and (e) any security for the Senior Indebtedness may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Senior Indebtedness. If, after the occurrence of a Senior Loan Default, Senior Lender acquires title to any of the Property pursuant to a mortgage foreclosure conducted in accordance with applicable law, the lien, operation, and effect of the Junior Security Instrument and other Junior Loan Documents automatically shall terminate with respect to such Property upon Senior Lender's acquisition of title.

(g) Junior Lender acknowledges that it entered into the transactions contemplated by the Junior Loan Documents and made the Junior Loan to Borrower without reliance upon any information or advice from Senior Lender. Junior Lender made its own underwriting analysis in connection with the Junior Loan, its own credit review of Borrower, and investigated all matters pertinent, in Junior Lender's judgment, to its determination to make the Junior Loan to Borrower. Junior Lender acknowledges that it was represented by competent counsel in connection with this Agreement.

(h) Junior Lender hereby represents and warrants that: (i) Junior Lender is now the owner and holder of the Junior Loan Documents; (ii) the Junior Loan Documents are now in full force and effect; (iii) the Junior Loan Documents have not been modified or amended; (iv) no default or event which, with the passing of time or giving of notice would constitute a default, under the Junior Loan Documents has occurred; (v) the current outstanding principal balance of the Junior Indebtedness is \$967,252; (vi) no scheduled monthly payments under the Junior Loan Documents have been or will be prepaid except with the prior written consent of Senior Lender; (vii) none of the rights of Junior Lender under any of the Junior Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise; and (viii) there are no other Junior Loan Documents other than those listed on Exhibit B hereto. Borrower further represents and warrants that it has provided to Senior Lender a true, complete, and correct copy of all the Junior Loan Documents.

(i) Junior Lender hereby agrees that notwithstanding anything to the contrary in the Junior Loan Documents, for so long as the Senior Loan is outstanding, (i) the maturity date of the Junior Note shall occur no earlier than one (1) month after the maturity date of the Senior Note, and (ii) Borrower shall not be obligated to pay more than seventy-five percent (75%) of Excess Cash Flow (as defined herein) in payments under the Junior Note and under other debt subordinate to the Senior Loan. For the purposes hereof, the following definitions shall apply:

**“Excess Cash Flow”** shall mean, for any period, Gross Revenues for such period less the sum of (i) Expenses of the Property for such period, and (ii) without duplication, all amounts due on the Senior Loan Obligations for such period.

**“Expenses of the Property”** shall mean, for any period, the current expenses, paid or accrued, of operation, maintenance and current repair of the Property, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Loan Documents), a management fee (however characterized) not to exceed 3.25% of Gross Revenues, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Property shall not include any payments, however characterized, on account of the Junior Loan or any other subordinate financing in respect of the Property or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

**“Gross Revenues”** shall mean all receipts, revenues, income and other moneys received by or on behalf of Borrower and derived from the ownership or operation of the Property, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Property. Gross Revenues shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with the applicable law.

**“Senior Loan Obligations”** shall mean and includes, collectively, and without limitation, each of the following: (A) all debt service payments due on the Senior Indebtedness, (B) all obligations of Borrower under the Senior Loan Documents, (C) all capital expenditures required for the proper maintenance of the Property in accordance with the Senior Loan Documents, as calculated by Borrower in accordance with customarily accepted cash basis accounting principles, consistently applied, and in accordance with the terms of the Senior Loan Documents; (D) all amounts required to be deposited into any replacement reserve, completion/repair reserve, operating deficit reserve, principal repayment reserve, replacement hedge reserve or other reserve or escrow established or required by Senior Lender or Servicer in connection with the Senior Loan and the Senior Loan Documents, including the Senior Security Instrument, and (E) all fees, costs and expenses of Senior Lender and Servicer in connection with the Senior Loan.

(j) At the request of the Borrower or the Senior Lender, Junior Lender agrees to subordinate the Junior Loan and the Junior Loan Documents to new indebtedness incurred by the Borrower to refinance and pay in full the Senior Loan. Such refinance loan shall not be for a principal amount in excess of the balance of the original principal amount of the Senior Loan and the costs related to such refinancing, and to any loan documents related to such refinancing. Junior Lender agrees to execute a subordination

agreement recognizing the rights of the lender providing such refinancing, which subordination agreement shall be on substantially the same terms as this Agreement, and to execute such other documents as may reasonably be required by the Senior Lender or the lender providing such refinancing.

**4. Standstill Agreement; Right to Cure Senior Loan Default.**

(a) Until such time as any of the Senior Indebtedness has been repaid in full and the Senior Security Instrument has been released and discharged, Junior Lender shall not without the prior written consent of Senior Lender, which may be withheld in Senior Lender's sole and absolute discretion, take any Enforcement Action, including, without limitation, (i) accelerate the Junior Loan, (ii) exercise any of Junior Lender's remedies under the Junior Security Instrument or any of the other Junior Loan Documents (including, without limitation, the commencement of any judicial or non-judicial action of proceeding (a) to enforce any obligation of Borrower under any of the Junior Loan Documents, (b) to collect any monies payable to Borrower, (c) to have a receiver appointed to collect any monies payable to Borrower; or (d) to foreclose the lien(s) created by the Junior Security Instrument) or (iii) file or join in the filing of any involuntary Bankruptcy Proceeding against Borrower or any person or entity which owns a direct or indirect interest in Borrower, except as otherwise permitted herein; provided, however, that such limitation on the remedies of Junior Lender shall not derogate or otherwise limit Junior Lender's rights, following an event of default under the Junior Loan Documents to (a) compute interest on all amounts due and payable under the Junior Loan at the default rate described in the Junior Loan Documents, (b) compute prepayment premiums and late charges, and (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Junior Loan.

(b) Senior Lender shall, simultaneously with the sending of any notice of a Senior Loan Default to Borrower, send to Junior Lender a copy of said notice under the Senior Loan Documents; provided, however, failure to do so shall not affect the validity of such notice or any obligation of Borrower to Senior Lender and shall not affect the relative priorities between the Senior Loan and the Junior Loan as set forth herein. Borrower covenants and agrees to forward to Junior Lender, within three (3) business days of Borrower's receipt thereof, a copy of any notice of a Senior Loan Default Borrower receives from Senior Lender.

(c) Junior Lender shall have the right, but shall have no obligation, to cure any Senior Loan Default; provided, if Junior Lender shall elect to cure any such Default, it shall so notify Senior Lender and shall commence and complete such curing within any applicable notice or grace period, if any, as Borrower is permitted by the terms of the Senior Loan Documents to cure such Senior Loan Default. Junior Lender shall not be subrogated to the rights of Senior Lender under the Senior Loan Documents by reason of Junior Lender having cured any Senior Loan Default. However, Senior Lender acknowledges that, to the extent so provided in the Junior Loan Documents, amounts advanced or expended by Junior Lender to cure a Senior Loan Default may be added to and become a part of the Junior Indebtedness.

(d) Junior Lender agrees that, notwithstanding any contrary provision contained in the Junior Loan Documents, a Senior Loan Default shall not constitute a default under the Junior Loan Documents if no other default occurred under the Junior Loan Documents.

(e) Junior Lender acknowledges that any conveyance or other transfer of title to the Property pursuant to a foreclosure of the Junior Security Instrument (including a conveyance or other transfer of title pursuant to the exercise of a power of sale contained in the Junior Security Instrument), or any deed or assignment in lieu of foreclosure or similar arrangement, shall be subject to the transfer provisions of the Senior Loan Documents; and the person (including Junior Lender) who acquires title to the Property pursuant to the foreclosure proceeding (or pursuant to the exercise of a power of sale contained in the Junior Security Instrument) shall not be deemed to be automatically approved by Senior Lender.

5. **Insurance.** Junior Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Junior Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Property.

6. **Default.** Junior Lender and Borrower acknowledge and agree that a default by either such party under this Agreement shall, at the sole option of Senior Lender, constitute a default under the Senior Loan Documents. Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

7. **Enforcement Costs.** Borrower agrees to reimburse Senior Lender for any and all costs and expenses (including reasonable attorneys' fees) incurred by Senior Lender in connection with enforcing its rights against Junior Lender under this Agreement.

8. **Notices.** Any notice which any party hereto may be required or may desire to give hereunder shall be deemed to have been given and shall be effective only if it is in writing and (i) delivered personally, (ii) mailed, postage prepaid, by United State registered or certified mail, return receipts requested, (iii) delivered by overnight express courier or (iv) sent by telecopier, in each instance addressed as follows:

To Junior Lender:

State of Utah, Olene Walker Housing Loan Fund  
140 East 300 South, First Floor

Salt Lake City, Utah 84111  
Facsimile: (801) 526-9238

If to Senior Lender: Goldman Sachs Bank USA  
200 West Street, 27<sup>th</sup> Floor  
New York, New York 10282  
Attention: Scott Maxfield  
Email: [scott.maxfield@gs.com](mailto:scott.maxfield@gs.com)

and: Goldman Sachs Bank USA  
200 West Street, 27<sup>th</sup> Floor  
New York, New York 10282  
Attention: Urban Investment Group Portfolio Manager  
Email: [gs-uig-docs@gs.com](mailto:gs-uig-docs@gs.com);  
[gs-uig-portfolio-manager@gs.com](mailto:gs-uig-portfolio-manager@gs.com)

with a copy to: Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Aviva Yakren, Esq.  
Telephone No.: (212) 839-5682  
Fax No.: (212) 839-5599  
Email: [ayakren@sidley.com](mailto:ayakren@sidley.com)

Prior to the Conversion  
Date, with a copy to: Citibank, N.A.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Re: Enginehouse Apartments Deal ID No. 60001371  
Facsimile: (212) 723-8209

and to: Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: Enginehouse Apartments Deal ID No. 60001371  
Facsimile: (805) 557-0924

Following the Conversion  
Date, with a copy to: Citibank N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: Enginehouse Apartments Deal ID No. 60001371  
Facsimile: (215) 328-0305

And a copy of any notices of default sent to: Citibank, N.A.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, New York 10013  
Attention: General Counsel's Office  
Re: Enginehouse Apartments Deal ID No. 60001371  
Facsimile: (646) 291-5754

or at such other addresses or to the attention of such other persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender for failure to be called for.

9. **WAIVER OF TRIAL BY JURY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

10. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Junior Loan Documents, other than by reason of payments which Junior Lender is obligated to remit to Senior Lender pursuant to the terms hereof; (iii) the acquisition by Senior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Security Instrument; or (iv) the acquisition by Junior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Junior Security Instrument, but only if such acquisition of title does not violate any of the terms of this Agreement.

11. **Miscellaneous.**

(a) Junior Lender shall, within ten (10) business days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Junior Loan, the aggregate accrued and unpaid interest under the Junior Loan, and stating whether, to the knowledge of Junior Lender, any default or event of default exists under the Junior Loan, and containing such other information with respect to the Junior Indebtedness as Senior Lender may reasonably require.

(b) Junior Lender shall give Senior Lender a concurrent copy of each notice of a Junior Loan Default or other material notice given by Junior Lender under



the Junior Loan Documents. Senior Lender shall give Junior Lender a concurrent copy of each notice of a Senior Loan Default or other material notice given by Senior Lender under the Senior Loan Documents. This Agreement shall bind and inure to the benefit of all successors and assigns of Junior Lender and Senior Lender. Senior Lender may assign its interest in the Senior Loan Documents without notice to or consent of Junior Lender. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note. Junior Lender may only assign its rights and interests hereunder to another governmental entity or otherwise following the prior written consent of Senior Lender, which consent may be withheld or conditioned in its sole and absolute discretion.

(c) Senior Lender hereby consents to the Junior Loan and the Junior Loan Documents; provided, however, that this Agreement does not constitute an approval by Senior Lender of the terms of the Junior Loan Documents. Junior Lender hereby consents to the Senior Loan and the Senior Loan Documents; provided, however, that this Agreement does not constitute an approval by Junior Lender of the terms of the Senior Loan Documents.

(d) This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

(e) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(f) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(g) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(h) Each party hereto hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(i) Borrower hereby acknowledges and consents to the execution of this Agreement, and agrees to be bound by the provisions hereof that are applicable to Borrower. Solely as between Senior Lender and Junior Lender, all of the signatories

below hereby agree that to the extent of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Senior Loan Documents and/or the Junior Loan Documents respectively, the terms and provisions of this Agreement shall govern and control. By executing this Agreement in the place provided below, Borrower hereby (i) acknowledges the provisions hereof, (ii) agrees not to take any action inconsistent with Senior Lender's rights or Junior Lender's rights under this Agreement, (iii) waives and relinquishes to the maximum extent permitted by law any and all rights, defenses and claims now existing or hereinafter accruing relating to Junior Lender's forbearance from exercising any rights and remedies pursuant to Section 4 of this Agreement, including, without limitation, any defenses based on the statute of limitations or any equitable defenses, such as laches, and (iv) acknowledges and agrees that (A) this Agreement is entered into for the sole protection and benefit of Senior Lender and Junior Lender (and their respective successors, assigns and participants), and no other person (including Borrower) shall have any benefits, rights or remedies under or by reason of this Agreement, (B) nothing in this Agreement is intended, or shall be construed to, relieve or discharge the obligations or liabilities of any third party (including Borrower under the Senior Loan Documents and the Junior Loan Documents), (C) neither of them nor any of their affiliates shall be, or be deemed to be, beneficiaries of any of the provisions hereof or have any rights hereunder whatsoever, and (D) no provision of this Agreement is intended to, or shall be construed to, give any such third party (including Borrower) any right subrogating to the rights of, or action against, Senior Lender or Junior Lender.

(j) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

(k) The parties hereto acknowledge and agree that Funding Lender and Permanent Funding Lender are each third party beneficiaries of this Agreement, with full rights as such.

(l) Nothing herein or in any of the Senior Loan Documents or Junior Loan Documents shall be deemed to constitute Senior Lender as a joint venturer or partner of Junior Lender.

12. **Intentionally Omitted.**

13. **Attached Exhibits.**

The following Exhibits are attached to this Agreement and are incorporated by reference herein as if more fully set forth in the text hereof:

**Exhibit A – Legal Description**

**Exhibit B – Junior Loan Documents**

**Exhibit B-1 – Reserved**


### **Exhibit C – Modifications to Subordination and Intercreditor Agreement**

The terms of this Agreement are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Agreement, the terms of said Exhibits shall be controlling in all respects.

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**GOLDMAN SACHS BANK USA,**  
a New York State chartered bank

  
Name: Michael Lohr  
Title: Authorized Signatory

STATE OF NEW YORK )  
 )  
COUNTY OF KINGS ) SS:

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Theresa Meinda  
Notary Public

**THERESA MENDEZ**  
Notary Public, State of New York  
No. 01ME6274031  
Qualified in Kings County  
Commission Expires Dec. 24, 2024


**ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST SET FORTH ABOVE:**

**BORROWER:**

**JF ENGINEHOUSE PARTNERS, LLC,**  
a Utah limited liability company

By: JF Enginehouse Member, LLC,  
its managing member

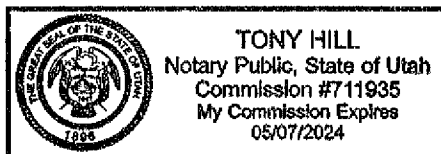
By: J. Fisher Companies, LLC,  
its manager

By:   
Name: Owen Fisher  
Title: Manager

STATE OF UTAH                     )  
  ) ss.:  
COUNTY OF DAVIS             )

On this 15 day of August, 2023, before me, the undersigned Notary Public, personally appeared Owen Fisher, who acknowledged himself to be the Manager of J. Fisher Companies, LLC, the Manager of JF Enginehouse Member, LLC, the Managing Member of JF Enginehouse Partners, LLC, a Utah limited liability company, and that he executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as such officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.



  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot B, THE YARD SUBDIVISION - FIRST AMENDED, according to the official plat recorded April 28, 2017 as Entry No. 1068309 in the Summit County Recorder's office.

## **EXHIBIT B**

### **JUNIOR LOAN DOCUMENTS**

1. Trust Deed With Assignment of Rents (Loan No. WHE2003), dated as of the date hereof, made by JF Enginehouse Partners, LLC ("Borrower") to Cottonwood Title Insurance Agency, Inc., as trustee, for the benefit of Utah Department of Workforce Services Housing and Community Development Division, Olene Walker Housing Loan Fund ("Junior Lender");
2. Promissory Note (Loan No. WHE2003), dated as of the date hereof, in the amount of \$967,252, made by Borrower in favor of Junior Lender; and
3. Deed Restriction (Loan No. WHE2003) made by Borrower for the benefit of Junior Lender.



**EXHIBIT B-1**

**RESERVED**

**EXHIBIT C**

**MODIFICATIONS TO  
SUBORDINATION AND INTERCREDITOR AGREEMENT**

The following modifications are made to the text of the Agreement that precedes this Exhibit:

None.

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Agreement.