

This document prepared by;  
After recording return to:

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### INTERCREDITOR AND SUBORDINATION AGREEMENT

31<sup>st</sup> THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this "**Agreement**") is made and entered into as of May 31, 2019, by REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency ("**RDA**") and WASHINGTON FEDERAL, NATIONAL ASSOCIATION ("**Construction Lender**"); and acknowledged and consented to by PAPERBOX DEVELOPERS, LLC, a Utah limited liability company ("**Borrower**").

#### RECITALS:

A. Construction Lender has extended or will extend a construction loan (as more particularly defined below, the "**Construction Loan**") to Borrower in the original principal amount of Thirty-Two Million Two Hundred Thousand and 00/100 Dollars (\$32,200,000.00) pursuant to the terms and conditions of that certain Construction Loan Agreement of approximately even date herewith between Construction Lender and Borrower (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Construction Loan Agreement**"), as evidenced by that certain Promissory Note dated of approximately even date herewith executed by Borrower and payable to the order of Construction Lender (as renewed, extended, modified, amended or restated from time to time, the "**Construction Note**").

B. The Construction Note and the total indebtedness evidenced thereby are secured by that certain Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing dated of approximately even date herewith, executed by Borrower to the trustee named therein for the benefit of Construction Lender, which shall be recorded in the Official Records (the "**Official Records**") of Salt Lake County, Utah (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Senior Deed of Trust**"), granting a lien on certain real property located in Salt Lake County, Utah and more particularly described in Exhibit A attached hereto and incorporated herein. The Construction Loan Agreement, the Construction Note, the Senior Deed of Trust and any loan agreement, security agreement, pledge agreement, UCC financing statements, environmental indemnity agreement, guaranty, completion guaranty, any reimbursement agreement or reimbursement obligation of Borrower relating to Construction Lender's issuance or execution of a standby letter of credit or any interest rate swap, collar or other interest rate protection agreement that Borrower enters into with Construction Lender pertaining to the Construction Loan, or any assignment of architect's agreement, construction contract or other contracts or subcontracts or any other document or modification now or hereafter executed in connection therewith are herein referred to collectively as the "**Construction Loan Documents**".

C. Borrower and RDA are parties to that certain Option to Purchase Agreement dated as of April 21, 2017 (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Option Agreement**") whereby RDA has granted to Borrower the option (the "**Option**") to purchase the Property from RDA. As consideration for the Option, Borrower has agreed to develop the Property as a mixed-use project and to construct certain improvements thereon, including without

limitation, certain affordable residential housing units (the "**Improvements**", and together with the Property, the "**Project**"), pursuant to the terms and conditions of that certain Development Agreement (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Development Agreement**") between Borrower and RDA dated of approximately even date herewith and recorded in the Official Records. Borrower's obligations to construct the Improvements in accordance with the Development Agreement are guaranteed by CAMERON GUNTER, an individual, and MICAH PETERS, an individual, pursuant to the terms and conditions of that certain Guaranty (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Guaranty**") dated of approximately even date herewith.

D. Concurrently herewith, Borrower and RDA have executed and recorded in the Official Records that certain Option to Repurchase Agreement (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Repurchase Agreement**"). Pursuant to the terms and conditions of the Repurchase Agreement, Borrower has granted to RDA the option to repurchase the Property from Borrower upon the occurrence of an Event of Default (as defined in the Development Agreement).

E. As additional consideration for the Option, Borrower and RDA have executed and recorded in the Official Records that certain Restrictive Use Agreement dated of approximately even date herewith (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Restrictive Use Agreement**"), which Restrictive Use Agreement requires Borrower, and any subsequent owners of the Property, to comply with certain restrictive conditions and covenants with respect to the Project, including, without limitation, the requirement that the Project include at least thirty-nine (39) affordable housing units (the "**Units**") for which the annualized rent per dwelling unit does not exceed thirty percent (30%) of the annual income of a family whose annual income equals sixty percent (60%) or less of the Area Median Income for Salt Lake County, Utah for a term of thirty (30) years (the "**Affordability Requirement**"). Borrower's commitment to develop and maintain the Units in accordance with the Affordability Requirement is secured by a Trust Deed with Assignment of Rents dated of approximately even date herewith, executed by Borrower, to the trustee named therein, for the benefit of RDA, which shall be recorded in the Official Records (as amended, supplemented, modified, restated, renewed or extended from time to time, the "**Subordinate Deed of Trust**"). The Subordinate Deed of Trust, the Option to Purchase Agreement, the Development Agreement, the Guaranty, and the Repurchase Agreement are herein referred to collectively as the "**RDA Documents**". The Restrictive Use Agreement is expressly excluded from the definition of "RDA Documents".

F. Construction Lender is willing to make the Construction Loan only if the RDA agrees to subordinate and make inferior the right, title, security interest, lien and interest created by the Subordinate Deed of Trust and the other RDA Documents to the right, title, security interest, lien and interest of the Senior Deed of Trust and the other Construction Loan Documents

G. The RDA is willing to subordinate and make inferior the right, title, security interest, lien and interest created by the Subordinate Deed of Trust and the other RDA Documents to the right, title, security interest, lien and interest of the Senior Deed of Trust and the other Construction Loan Documents only on the terms and conditions hereof, which include, certain rights to notices, cure defaults under the Senior Deed of Trust and the other Construction Loan Documents and to exercise the rights under the Repurchase Agreement provided that the obligations under the Construction Loan are paid in full or the Borrower's obligations under the Construction Loan is assumed by the RDA in accordance herewith.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Construction Lender and RDA hereby agree as follows:

1. Recitals Incorporated. The recitals set forth hereinabove are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth hereinbelow, provided, however, that such recitals shall not be deemed to modify the express provisions hereinafter set forth.

2. Definitions. In addition to the terms defined in the Recitals hereto, the following terms shall have the meanings indicated below:

"**Collateral**" means, collectively, the Property, any Improvements and any and all other property (whether real, personal or otherwise) and interests in property which now constitutes or hereafter will constitute collateral or other security for payment of the Construction Loan pursuant to the Construction Loan Documents.

**"Construction Loan" or "Construction Loan Obligations"** means all present and future indebtedness, obligations and liabilities of Borrower under the Construction Loan Documents, including (a) all principal (including principal which is borrowed, repaid and reborrowed), interest (including interest accruing subsequent to, and interest that would have accrued but for, the filing of any petition under any bankruptcy, insolvency or similar law or the commencement of any Proceeding), default interest, late charges, prepayment fees, expenses, fees, reimbursement obligations relating to Construction Lender's issuance or execution of standby letters of credit or developer's agreements pertaining to the Property or surrounding properties, other reimbursements, interest rate swaps, collars or other interest rate protection agreements that Borrower may enter into with Construction Lender pertaining to the Construction Loan, indemnities and other amounts payable thereunder, in each case whether now or hereafter arising, direct or indirect, primary or secondary, joint, several or joint and several, liquidated or unliquidated, final or contingent, and whether incurred as maker, endorser or otherwise; (b) all indebtedness arising from all present and future optional or obligatory advances (including advances to cover overdrafts that pertain to the Property) under the Construction Note or any other Construction Loan Document, (c) any and all amendments, modifications, extensions, renewals, refinancing or refundings of any of such indebtedness, obligations or liabilities, and (d) any and all sums advanced or expended by Construction Lender (whether deemed optional or obligatory advances, or otherwise) which Construction Lender deems necessary or appropriate (1) to advance or complete construction of the Property and any Improvements and market the Property or any portion thereof for sale, (2) to repair, maintain or otherwise protect the Property and any Improvements or to prevent waste or destruction or to pay or prevent liens or to defend Borrower's title or Construction Lender's lien priority, (3) to pay taxes, assessments or insurance premiums in respect of the Property or any Improvements or to otherwise protect Construction Lender's security interest in the Property, any Improvements and any other Collateral, or (4) in connection with Construction Lender's protection or exercise of its rights or remedies under the Construction Loan Documents. To the extent any payment on any of the Construction Loan Obligations, whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of setoff or otherwise, is recovered by or required to be paid over to Borrower or a receiver, trustee in bankruptcy, liquidating trustee, agent or other Person in a Proceeding, such Construction Loan Obligation or any part thereof originally intended to be satisfied by such payment shall be deemed to be reinstated and outstanding as if such payment had not occurred. All outstanding Construction Loan Obligations shall be and remain Construction Loan Obligations for all purposes of this Agreement, regardless of whether they are allowed, not allowed or subordinated in any Proceeding.

**"Person"** means any person, individual, sole proprietorship, partnership, joint venture, corporation, limited liability company, unincorporated organization, association, institution, entity, party, including any government and any political subdivision, agency, or instrumentality thereof.

**"Proceeding"** means (a) any voluntary or involuntary case, action or proceeding before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

**"Protective Advances"** means any and all sums advanced or expended by Construction Lender (whether deemed optional or obligatory advances, or otherwise) which Construction Lender deems necessary or appropriate (a) to advance or complete construction of the Property and any Improvements and market the Property or any portion thereof for sale, (b) to repair, maintain or otherwise protect the Property and any Improvements or to prevent waste or destruction or to pay or prevent liens or to defend Borrower's title or Construction Lender's lien priority, (c) to pay taxes, assessments or insurance premiums in respect of the Property or any Improvements or to otherwise protect Construction Lender's security interest in the Property, any Improvements and any other Collateral, or (d) in connection with Construction Lender's protection or exercise of its rights or remedies under the Construction Loan Documents.

**"Subordinate Obligations"** means all indebtedness, obligations and liabilities of Borrower under the RDA Documents, including all principal, interest (including interest accruing subsequent to, and interest that would have accrued but for, the filing of any petition under any bankruptcy, insolvency or similar law or the commencement of any Proceeding), default interest, late charges, prepayment fees, expenses, fees, reimbursements, indemnities and other amounts payable thereunder, in each case whether now or hereafter arising, direct or indirect, primary or secondary, joint, several or joint and several, liquidated or unliquidated, final or contingent and whether incurred as a maker, endorser, guarantor or otherwise. Subordinate Obligations shall also include any note, advance, stock or any other instrument or agreement, and all amounts which may be due under such instruments or agreements, received by RDA,

directly or indirectly in payment or performance of or on account of the Subordinate Obligations, in violation of the terms of the Construction Loan Documents, subject to the terms of this Agreement. The Restrictive Use Agreement is not a Subordinate Obligation under this Agreement and shall remain senior in all respects to the Senior Deed of Trust and all other Construction Loan Documents.

3. Subordination. RDA, for itself and its successors and assigns (including, without limitation, all subsequent holders of the Subordinate Deed of Trust) does hereby subordinate (a) the Subordinate Deed of Trust and all other RDA Documents, and (b) all of its right, title, security interest, lien, and interest in and to the Property, any Improvements thereon and any other Collateral and all sales proceeds, other proceeds, rents, issues, and profits therefrom, to (i) the Senior Deed of Trust and all other Construction Loan Documents, (ii) all of the Construction Loan Obligations, (iii) all of the right, title, security interest, lien and interest held by Construction Lender and its successors and assigns (including, without limitation, all subsequent holders of the Construction Note and the Senior Deed of Trust), in and to the Property, any Improvements thereon and any other Collateral and all sales proceeds, proceeds from insurance or condemnation, other proceeds, rents, issues, and profits therefrom, under and pursuant to (X) the Construction Note, (Y) the Senior Deed of Trust, and (Z) all other Construction Loan Documents, and any and all extensions, renewals, modifications, and replacements thereof. From and after the date hereof, all of the documents, indebtedness, right, title, security interest, lien, and interest described in clauses (a) and (b) hereinabove shall be subject and subordinate to all of the documents, indebtedness, right, title, security interest, lien, and interest described in clauses (i), (ii) and (iii) hereinabove. This subordination specifically excludes the Restrictive Use Agreement, which shall remain senior to the Senior Deed of Trust, and all other Construction Loan Documents and any and all extensions, renewals, modifications and replacements thereof.

4. Payment Subordination. Borrower (or any other party) shall not make any payments to RDA on the Subordinate Obligations, and RDA shall not accept any payments from any Borrower (or any other party) pursuant to the RDA Documents, until the Construction Loan Obligations have been paid in full.

5. Default Under RDA Documents.

(a) Default Notice. RDA shall provide Construction Lender with a copy of any written notice sent by RDA to Borrower regarding the occurrence of a default under any of the RDA Documents concurrently with the delivery of such default notice to Borrower. Construction Lender shall have the right, not the obligation, to cure any default under any of the RDA Documents within thirty (30) days from the expiration of Borrower's cure period, if any, provided in the relevant RDA Documents.

(b) No Enforcement of RDA Documents. So long as any of the Construction Loan Obligations remain outstanding, RDA shall not assert, foreclose, enforce, realize upon or bring a legal action with respect to the Subordinate Obligations or any part thereof, the Subordinate Deed of Trust, any of the other RDA Documents or any Collateral.

6. Default Under Construction Loan Documents.

(a) Default Notice. Construction Lender shall provide RDA with a copy of any written notice (the "**Default Notice**") sent by Construction Lender to Borrower regarding the occurrence of a default under any of the Construction Loan Documents, concurrently with the delivery of such Default Notice to Borrower.

(b) RDA's Cure Right. RDA shall have the right, but not the obligation, to cure any default under any of the Construction Loan Documents within thirty (30) days from the expiration of Borrower's cure period, if any, provided in the relevant Construction Loan Documents; provided that during such cure period granted herein to RDA, Construction Lender shall be entitled to begin exercising any rights and remedies it has under the Construction Loan Documents and under applicable law as a result of such default, and such default shall not be cured unless and until the particular default under the Construction Loan Documents has been remedied and Construction Lender has been fully reimbursed for all costs and expenses incurred by Construction Lender in connection with any foreclosure or exercise of power of sale or other proceeding for enforcement of the Senior Deed of Trust, or by reason of a deed in lieu of foreclosure. RDA acknowledges and agrees that Construction Lender's failure to provide RDA with a copy of any Default Notice delivered to Borrower shall not defeat or impair the subordination and other agreements herein made, nor shall it defeat, impair or prevent Construction Lender from exercising any of its rights or remedies as a result of such default in whole or in part.

(c) RDA's Right to Purchase Construction Loan. Upon delivery of a copy of the Default Notice to RDA, RDA shall have the right, but not the obligation, to purchase the Construction Loan at par for a purchase price equal to the

aggregate amount outstanding, including principal, accrued interest, default interest, late charges, Protective Advances, and any other outstanding Construction Loan Obligations. If RDA elects in writing to purchase the Construction Loan, RDA's right to purchase the Construction Loan (the "**Purchase**") shall be subject to the following conditions: (1) the Purchase shall close ("**Purchase Closing Date**") on the earlier of (a) ninety (90) days after the delivery of a copy of the Default Notice to RDA, or (b) the date set for foreclosure of the Senior Deed of Trust; (2) RDA shall pay all costs and expenses listed above of the Purchase; (3) Senior Lender shall execute such instruments as are reasonably required by the title company to insure RDA as the holder of the Senior Deed of Trust; and (4) the Purchase shall be accomplished through an escrow at a title company, and RDA shall deposit the purchase price and both Construction Lender and RDA shall deposit all documents effectuating the Purchase with said title company. Upon consummation of the Purchase, RDA shall be subrogated to the rights of Construction Lender under the Construction Loan Documents.

(d) RDA's Right to Assume Construction Loan Documents. Upon delivery of a copy of the Default Notice to RDA, RDA (or its affiliate that is wholly-owned by RDA) (as applicable, the "**New Borrower**") shall have the right, but not the obligation, to assume the obligations of Borrower under the Construction Loan Documents with the written consent of Construction Lender. Notwithstanding any other provision of this Agreement, the RDA Documents or the Construction Loan Documents to the contrary, the effectiveness of any assumption of the obligations of Borrower under Construction Loan Documents by New Borrower pursuant to this Section 6(d) shall be subject the following terms and conditions:

(i) Construction Lender shall have the right to approve the New Borrower in its sole discretion;

(ii) If required by Construction Lender, RDA shall have selected, and Construction Lender shall have approved, a replacement guarantor to guaranty all of the Construction Loan Obligations;

(iii) New Borrower, any replacement guarantor and all other parties to the Construction Loan documents shall execute and deliver such assumption and other documents as Construction Lender may require.

(iv) Amortizing principal payments shall be required under the Construction Note upon completion of the Improvements in an amount to be determined by Construction Lender;

(v) All uncured Borrower defaults under the Construction Loan Documents shall have been cured prior to the proposed assumption;

(vi) New Borrower shall assume all of the Construction Loan Obligations, including, without limitation, all of the financial reporting and covenants under the Construction Loan Documents;

(vii) New Borrower shall have selected, and Lender shall have approved, a property manager to manage the Project pursuant to an executed property management agreement in form and substance acceptable to Construction Lender in its sole discretion, and the parties shall have executed and delivered to Construction Lender a collateral assignment and subordination of such property management agreement in form and substance acceptable to Construction Lender in its sole discretion;

(viii) Construction Lender shall have the right to file a UCC financing statement or such other documents as Construction Lender may require in connection with any personal property required to be pledged by New Borrower as additional security for the Construction Loan Obligations;

(ix) Construction Lender shall have received, at New Borrower's sole cost and expense, any title insurance policies or endorsements as may be required by Construction Lender to ensure the Senior Deed of Trust remains a valid first priority lien on the Property; and

(x) The assumption shall close ("**Assumption Date**") on the earlier of (a) ninety (90) days after the delivery of a copy of the Default Notice to RDA, or (b) the date set for foreclosure of the Senior Deed of Trust.

RDA acknowledges and agrees that in the case of any conflict between with this Section 6(d) and any provision of the Repurchase Agreement relating to RDA's option to repurchase the Property from Borrower, this Section 6(d) shall control.

(e) Failure to Elect to Purchase Construction Loan or to Assume Construction Loan Documents. If RDA has the right to purchase the Construction Loan under Section 6(c) or to assume the obligations of Borrower under the Construction Loan Documents under Section 6(c)(d), and the RDA does not elect to purchase the Construction Loan and close the Purchase by the Purchase Closing Date or assume the obligations of Borrower under the Construction Loan Documents by the Assumption Date, then Construction Lender thereafter shall have the right to amend, modify, restructure or extend the Senior Deed of Trust or any other Construction Loan Documents without notice to or the consent of RDA. In such event, the Subordinate Deed of Trust and the other RDA Documents (specifically excluding the Restrictive Use Agreement) and all indebtedness, obligations, liens and security interests evidenced or secured thereby or from time to time outstanding thereunder shall continue to be junior, subject, and subordinate in all respects to the Construction Loan, the Senior Deed of Trust and the Construction Loan Documents, as so amended, modified, extended, or restructured. Third parties including title insurance companies insuring the priority of the Senior Deed of Trust are hereby authorized to rely on this provision as to the priority of the Construction Loan Documents, as so amended, modified, extended or restructured, without any requirement to confirm such senior position from RDA.

7. Construction Lender's Freedom of Action. RDA agrees that Construction Lender may at any time and from time to time, without notice to or the consent of RDA, and without affecting the subordination and other agreements herein made by RDA, do any one or more of the following in Construction Lender's sole and absolute discretion:

(a) Extend, renew, modify, amend, increase, diminish or waive any of the terms of any of the Construction Loan Documents, including, without limitation, those arising out of building cost revisions, change orders or changes to the plans and specifications, or any payment provisions under any of the Construction Loan Documents, relating to the Property or any Improvements, or any payment provisions under any of the Construction Loan Documents, or grant any other indulgence to Borrower or any other Person in respect of any or all of the Construction Loan Obligations or any other matter;

(b) Make such Protective Advances as Construction Lender may deem appropriate (it being understood that Construction Lender has not in any way committed to make any such advance);

(c) Add or substitute, or take any action or omit to take any action which results in the release of any endorser, guarantor or any Collateral or security;

(d) apply any sums received from Borrower, any guarantor, endorser, or cosigner, or from the disposition of any Collateral or security, to any indebtedness whatsoever owing from such Person or secured by such Collateral or security, in such manner and order as Construction Lender determines in its sole discretion, and regardless of whether such indebtedness is part of the Construction Loan Obligations, is secured, or is due and payable;

(e) make loans or advances to Borrower secured in whole or in part by the Collateral or refrain from making any such loans or advances;

(f) accept partial payments of, compromise or settle, refuse to enforce, or release all or any parties to, any or all of the Construction Loan Obligations;

(g) settle, release (with or without receipt of consideration therefor, and whether by operation of law or otherwise), compound, compromise, collect or liquidate any of the Construction Loan Obligations or the Collateral in any manner permitted by applicable law; and

(h) accept, release (with or without receipt of consideration), waive, surrender, enforce, exchange, modify, impair or extend the time for the performance, discharge or payment of, any and all property of any kind securing any or all of the Construction Loan Obligations or any guaranty of any or all of the Construction Loan Obligations, or on which Construction Lender at any time may have a lien, or refuse to enforce its rights or make any compromise or settlement or agreement therefor in respect of any or all of such property; Construction Lender is not under and shall not hereafter be under any obligation to marshal any assets in favor of RDA, or against or in payment of any or all of the Construction Loan Obligations, and may proceed against any of the Collateral in such order and manner as it elects.

All such actions, rights and matters set forth in (a) through (h) above shall be senior in all respects to the Subordinate Obligations and the RDA Documents which shall automatically be subordinate to such actions, rights and matters set forth in (a) through (h) above. Third parties including title insurance companies insuring the priority of the Construction Loan Documents are

hereby authorized to rely upon this provision as to the priority of such matters without requirement to confirm such senior position from RDA.

8. No Transfer. RDA agrees that it shall not sell, assign, pledge, encumber or otherwise transfer any portion of its interest in the RDA Documents without the prior written consent of Construction Lender.

9. Representations, Warranties and Covenants of RDA. RDA hereby covenants, agrees, warrants, represents, and certifies to Construction Lender that:

(a) RDA has delivered to Construction Lender true, correct and complete copies of the RDA Documents, as they may be extended, renewed, amended and/or modified as of the date hereof;

(b) RDA is the owner and holder of the RDA Documents, including but not limited to the Subordinate Deed of Trust;

(c) None of the RDA Documents has been extended, renewed, amended, transferred, or otherwise modified except as disclosed to Construction Lender in writing;

(d) RDA acknowledges having received and reviewed copies of all of the Construction Loan Documents and RDA consents to and approves all of the provisions of each of the Construction Loan Documents and all other agreements including, without limitation, any escrow or disbursement agreements, between Borrower and Construction Lender for the disbursement of the proceeds of the Construction Loan;

(e) This Agreement has been duly authorized by RDA, the persons executing, acknowledging, and delivering this Agreement on behalf of RDA are fully authorized to do so, and all of the terms and provisions of this Agreement are fully enforceable against RDA and its successors and assigns;

(f) All payments, installments, and charges due and payable by Borrower under the RDA Documents to date have been paid;

(g) RDA has no knowledge of any previous default or event of default under any of the RDA Documents which has not been cured or waived. To the knowledge of RDA, there currently exists no default or event of default of any nature under the terms and provisions of any of the RDA Documents, or any combination thereof, and no condition which, with the giving of notice and/or the passage of time, would result in such an event of default;

(h) RDA agrees and covenants that copies of all notices, communications, or designations required or permitted under any of the RDA Documents shall be sent to Construction Lender at the address specified in Section 20 hereof, or at such other address as Construction Lender shall furnish to RDA in the manner provided in Section 20 hereof;

(i) Notwithstanding anything provided in the RDA Documents to the contrary, in no event shall the terms and provisions of any RDA Documents be modified, amended, renewed, or extended, unless Construction Lender shall first consent in writing to such modification, amendment, renewal, or extension, which consent may be withheld in Construction Lender's reasonable judgment;

(j) RDA acknowledges that all conditions precedent to (1) Borrower's exercise of the Option and purchase of the Property as set forth in Section 4.4 and Section 4.5 of the Option Agreement, and (2) RDA's obligation to sell the Property pursuant to Section 5.1 of the Option Agreement, have been satisfied as of the date of this Agreement;

(k) RDA acknowledges and understands that Construction Lender will rely upon the certification, warranties, representations, covenants, and agreements contained in this Agreement as a material consideration and inducement in making, extending or modifying the loan evidenced by the Construction Note.

10. Dealings with Borrower.

(a) In making disbursements under any of the Construction Loan Documents, Construction Lender has no duty to, nor has Construction Lender represented that it will, see to the application of any proceeds by the Person or Persons to whom Construction Lender disburses such proceeds. Any application or use of such proceeds for purposes other than those provided for in the Construction Loan Documents does not and shall not defeat the subordination herein made, in whole or in part.

(b) In making disbursements under any of the Construction Loan Documents, Construction Lender may waive any and all conditions to a disbursement contained in the Construction Loan Documents. No such waiver shall defeat the subordination herein made, in whole or in part.

(c) The rights granted to Construction Lender hereunder are solely for its protection and nothing herein contained shall impose on Construction Lender any duties with respect to Borrower or RDA.

11. Assignment of the Construction Loan Obligations. Construction Lender may assign or transfer any or all of the Construction Loan Obligations and/or any interest therein or herein and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Construction Loan Obligations shall be and remain senior to the Subordinate Obligations, and the Subordinate Obligations shall be and remain subject and subordinate to the Construction Loan Obligations for the purposes of this Agreement, and every immediate and successive assignee or transferee of any of the Construction Loan Obligations or of any interest therein or herein shall, to the extent of the interest of such assignee or transferee in the Construction Loan Obligations, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were Construction Lender; provided, however, that, unless Construction Lender shall otherwise consent in writing, Construction Lender shall have an unimpaired right, prior and superior to that of any such assignee or transferee, to enforce this Agreement, for the benefit of Construction Lender, as to those portions of the Construction Loan Obligations which Construction Lender has not assigned or transferred.

12. Bankruptcy. Upon any distribution of the assets or properties of Borrower or upon any dissolution, winding up, liquidation, bankruptcy or reorganization involving Borrower (whether in bankruptcy, insolvency or receivership proceedings or any other Proceeding, or upon an assignment for the benefit of creditors or otherwise):

(a) Construction Lender shall first be entitled to receive payment in full of the principal of and interest on the Construction Loan Obligations and all fees and any other payments (including post-petition interest and all costs and expenses) due pursuant to the terms of the Construction Loan Documents, before RDA is entitled to receive any payment on account of the Subordinate Obligations; and

(b) any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, to which RDA would be entitled except for the provisions of this Agreement, shall be paid by the debtor in possession, liquidating trustee or agent or other person making such payment or distribution directly to Construction Lender; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, shall be received by RDA on account of principal, interest, fees, or other amounts on or with respect to the Subordinate Obligations before all of the Construction Loan Obligations are paid in full, such payments or distribution shall be received and held in trust for and shall be paid over to Construction Lender forthwith, for application to the payment of the Construction Loan Obligations until all such Construction Loan Obligations shall have been paid in full in accordance with the terms of the Construction Loan Documents.

To effectuate the foregoing, RDA does hereby irrevocably assign to Construction Lender all of RDA's rights as a secured or unsecured creditor in any Proceeding and authorizes Construction Lender to take, or refrain from taking, any action to assert, enforce, modify, waive, release or extend RDA's lien and/or claim in such Proceeding, including but not limited to (a) filing a proof of claim arising out of the Subordinate Obligations, (b) voting or refraining from voting claims arising from the Subordinate Obligations, either in Construction Lender's name or in the name of Construction Lender as attorney-in-fact of RDA, (c) accepting or rejecting any payment or distribution made with respect to any claim arising from the Subordinate Obligations and applying such payment and distribution to payment of Construction Lender's claim until the Construction Loan Obligations are paid and satisfied in full in accordance with their terms, and (d) taking any and all actions and executing any and all instruments necessary



to effectuate the foregoing and, among other things, to establish Construction Lender's entitlement to assert RDA's claim in such Proceeding.

13. Additional Waivers and Agreements.

(a) RDA waives the right to require Construction Lender to proceed against Borrower or any other Person liable on any Construction Loan Obligation, to proceed against or exhaust any security held from Borrower or other Person, or to pursue any other remedy in Construction Lender's power whatsoever, and RDA waives the right to have the property of Borrower first applied to the discharge of any Construction Loan Obligation. Construction Lender may, at its election, exercise any right or remedy Construction Lender may have against Borrower or any security held by Construction Lender, including, without limitation, the right to foreclose upon any such security by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, without affecting or impairing in any way the obligations of RDA hereunder, except to the extent the Construction Loan Obligations have been paid, and RDA waives any defense arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy against Borrower or any such security, whether resulting from such election by Construction Lender or otherwise. RDA waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever (including, without limitation, any intervention or omission by Construction Lender) of the liability, either in whole or in part, of Borrower to Construction Lender for the Construction Loan Obligations.

(b) RDA assumes all responsibility for keeping itself informed as to the condition (financial or otherwise), business, assets and operations of Borrower, the condition of any Collateral and all other circumstances that might in any way affect RDA's risk under this Agreement (including, without limitation, the risk of nonpayment of the Construction Loan Obligations), and Construction Lender shall have no duty or obligation whatsoever to obtain or disclose to RDA any information or documents relative to such condition, business, assets, or operations of Borrower or such risk, whether acquired by Construction Lender in the course of its relationship with Borrower or otherwise.

(c) Without Construction Lender's prior written consent, RDA shall not at any time sell, assign or otherwise transfer any of the Subordinate Obligations, or any portion thereof, or any of its rights or obligations under the RDA Documents (except as otherwise expressly permitted herein).

(d) RDA acknowledges that Construction Lender has made no warranties or representations to it with respect to the due execution, legality, validity, completeness or enforceability of the Construction Loan Documents or the collectibility of the Construction Loan Obligations evidenced thereby.

(e) If any of the Construction Loan Obligations or any lien securing same, should be invalidated, avoided or set aside, the subordination provided for herein nevertheless shall continue in full force and effect and, as between Construction Lender and RDA, shall be and be deemed to remain in full force and effect.

(f) RDA unconditionally and irrevocably authorizes Construction Lender, upon the occurrence of and during the continuance of any default or event of default under the Construction Loan Documents, at its sole option, without affecting any obligations of such RDA hereunder, the enforceability of this Agreement, or the validity or enforceability of any liens of Construction Lender on any Collateral, to foreclose the Senior Deed of Trust or other instruments securing the Construction Loan Obligations by judicial or nonjudicial sale. RDA expressly, unconditionally and irrevocably waives any defenses to the enforcement of this Agreement or any liens created hereby, granted to or otherwise held by Construction Lender, or to the recovery by Construction Lender from Borrower or any other Person liable therefor of any deficiency after a judicial or nonjudicial foreclosure or sale, even though such a foreclosure or sale may impair the subrogation rights of RDA and may preclude RDA from obtaining reimbursement or contribution from Borrower or any other Person. RDA hereby expressly, unconditionally and irrevocably waives all rights (a) under Sections 361 through 365, 502(e) and 509 of the Bankruptcy Code (or any similar sections hereafter in effect under any other Federal or state laws or legal or equitable principles relating to bankruptcy, insolvency, reorganizations, liquidations or otherwise for the relief of debtors or protection of creditors), and (b) to seek or obtain conversion to a different type of proceeding or to seek or obtain dismissal of a proceeding, in each case in relation to a bankruptcy, reorganization, insolvency or other proceeding under similar laws with respect to Borrower. Without limiting the generality of the foregoing, RDA hereby expressly, unconditionally and irrevocably waives (i) the right to seek to provide credit (secured or otherwise) to Borrower in any way under Section 364 of the Bankruptcy Code unless the same is subordinated in right and time of payment in all aspects to the Construction Loan Obligations in a manner acceptable to Construction Lender in its sole and absolute discretion; (ii) the right to take a position inconsistent with or contrary to that of Construction Lender (including a position

by Construction Lender to take no action) if Borrower seeks to use, sell or lease Collateral (or the proceeds or products thereof) under Section 363 of the Bankruptcy Code; (iii) the right to receive any Collateral security (including any "super priority" or equal or "priming" or replacement lien) for any Subordinate Obligation unless Construction Lender has received a senior position acceptable to Construction Lender in its sole and absolute discretion to secure all Construction Loan Obligations (in the same Collateral to the extent Collateral is involved); and (iv) the right to seek adequate protection in respect of Collateral (or the proceeds or products thereof) under Section 363 or 361 of the Bankruptcy Code.

14. Continuing Benefits. No right of Construction Lender or any present or future holder of the Construction Loan Obligations to enforce the subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of Borrower or any other party, whether borrower, guarantor or otherwise, or by any act or failure to act in good faith, by the holder of the Construction Loan Obligations, or by any noncompliance by Borrower or any borrower, guarantor or otherwise with the terms of the Construction Note or any other of the Construction Loan Documents regardless of any knowledge thereof which such holder may have or be otherwise charged with.

15. Enforcement of Subordination. RDA, by its execution of this Agreement, authorizes and expressly directs Construction Lender to take such action as may be necessary or appropriate, in Construction Lender's sole discretion, from time to time to effectuate the subordination provided herein and hereby appoints Construction Lender its attorney-in-fact for such purpose, including, without limitation, in the event of any dissolution, winding up, liquidation, or reorganization of Borrower (whether in bankruptcy, insolvency, or receivership proceedings or upon an assignment for the benefit of creditors or otherwise) tending toward liquidation of the business or the assets of Borrower, the immediate filing of a claim for the unpaid balance of the Subordinate Obligations in the form required in such proceedings, the voting of such claims during the pendency of such proceedings, and the taking of all steps necessary to cause such claim to be approved.

16. No Waiver; Modification. Except as provided herein, neither this Agreement nor the transactions herein contemplated shall operate to waive the enforcement after the date hereof of any due on sale, due on encumbrance or accelerating transfer provision contained in the Construction Loan Documents. No delay on the part of Construction Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Construction Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon Construction Lender except as expressly set forth in a writing duly signed and delivered by or on behalf of Construction Lender. This Agreement may be executed in any number of counterparts.

17. Reinstatement of Agreement. The provisions of this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Construction Loan Obligations is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be returned by Construction Lender under any bankruptcy law, state or federal law, common law or equitable cause, all as though such payment had not been made.

18. Borrower's Waivers and Covenants.

(a) Waivers. Borrower hereby waives (a) notice of acceptance of this Agreement by Construction Lender, (b) notice of the existence or creation or nonpayment of all or any of the Construction Loan Obligations, and (c) all diligence in the collection or protection of or realization upon the Construction Loan Obligations or the collateral therefor.

(b) Covenants. Borrower hereby covenants that it shall comply with all its obligations under the RDA Documents, including, without limitation, its obligation to comply with the applicable deadlines set forth in the Schedule of Development attached to the Option Agreement as Exhibit A.

19. Legend. RDA agrees to cause all instruments evidencing indebtedness or other obligations of Borrower to RDA which are or may be subject to the provisions of this Agreement to be subject to an appropriate legend to the effect that such indebtedness or other obligation evidenced by such instrument is subordinated to the Construction Loan Obligations in the manner and to the extent set forth in this Agreement, and RDA will make appropriate entries in the books and records of RDA to indicate that the Subordinate Obligations are subject to the Construction Loan Obligations.

20. Notices. Any notice which a party is required or may desire to give the other shall be in writing and may be sent by facsimile, personal delivery or by mail (either (i) by United States registered or certified mail, return receipt requested, postage prepaid, or (ii) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery),

addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given at least fifteen (15) days in advance):

If to RDA:  
Redevelopment Agency of Salt Lake City  
451 S. State Street, Room 418  
Salt Lake City, Utah 84111  
Attn: Chief Operating Officer

If to Lender:  
Washington Federal, National Association  
1207 East Draper Parkway  
Draper, Utah 84020  
Attention: James Endrizzi  
Telephone: 801-366-2261  
E-mail: james.endrizzi@wafd.com

With a copy to:  
Snell & Wilmer L.L.P.  
15 W South Temple  
Salt Lake City, UT 84101  
Attention: Brian D. Cunningham, Esq.  
Telephone: 801-257-1954  
E-mail: bcunningham@swlaw.com

If to Borrower:  
Paperbox Developers, LLC  
180 W University Ave, #200  
Provo, UT 84601  
Attention: Craig Bingham  
Telephone: 801-655-1998  
E-mail: cbingham@pegcompanies.com

21. Priority. The priorities herein specified are applicable irrespective of the time of creation of the Construction Loan Obligations or the Subordinate Obligations.

22. No Modification to Construction Loan Documents. This Agreement is not intended to modify and shall not be construed to modify any term or provision of the Construction Note, the Senior Deed of Trust or any other documents or instruments evidencing, securing, guaranteeing the payment of, or otherwise relating to the indebtedness evidenced by the Construction Note or secured by the Senior Deed of Trust, or both.

23. Further Assurances. So long as the Senior Deed of Trust shall affect the Property or any portion thereof, RDA, its successors or assigns, or any other legal holder of the Subordinate Deed of Trust, as the case may be, shall execute, acknowledge, and deliver upon the demand of Construction Lender, at any time or times, any and all further documents or instruments in recordable form for the purpose of further confirming the subordination and the agreements herein set forth.

24. Governing Law. This Agreement shall be governed by the laws of the State of Utah (without reference to its conflict of laws principles).

25. Forum. Construction Lender and RDA each hereby irrevocably submits generally and unconditionally to the jurisdiction of any state court or any United States federal court sitting in the State of Utah, over any suit, action or proceeding arising out of or relating to this Agreement. Construction Lender and RDA each hereby irrevocably waives, to the fullest extent permitted by law, any objection that it 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.

26. WAIVER OF JURY TRIAL. CONSTRUCTION LENDER AND RDA WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, COUNTERCLAIM, ACTION OR CAUSE OF ACTION RELATING TO OR ARISING OUT OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY CONSTRUCTION LENDER AND RDA AND CONSTRUCTION LENDER AND RDA HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. CONSTRUCTION LENDER AND RDA ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 26 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. CONSTRUCTION LENDER AND RDA EACH FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

[Signatures Continue on Following Pages]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

"RDA"

REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public entity

*Jacqueline M. Biskupski*  
Jacqueline M. Biskupski, Executive Director

Approved as to form:  
Salt Lake City Attorney's Office

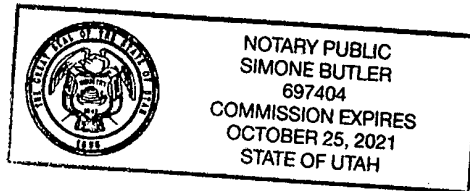
*[Signature]*  
Katherine N. Lewis, Senior City Attorney

State of Utah )  
County of Salt Lake ) ss.

On this 23<sup>rd</sup> day of May, in the year 2019, before me Simone Butler, a notary public, personally appeared JACQUELINE M. BISKUPSKI, an individual, the Executive Director of REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public entity, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

*[Signature]*  
Notary Signature



"LENDER"

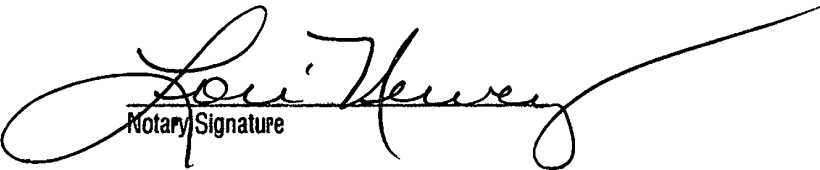
WASHINGTON FEDERAL, NATIONAL ASSOCIATION

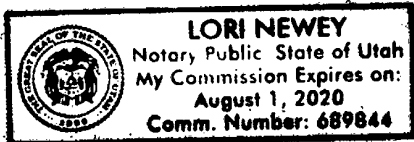
By:   
Name: James Endrizzi  
Title: Senior VP/Deputy Commercial Banking Group Manager

State of Utah )  
County of Salt Lake )<sup>ss.</sup>

On this 27<sup>th</sup> day of May, in the year 2019, before me LORI NEWEY, a notary public, personally appeared JAMES ENDRIZZI, an individual, a Senior Vice President/Deputy Commercial Banking Group Manager of WASHINGTON FEDERAL, NATIONAL ASSOCIATION, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

  
Notary Signature



**ACKNOWLEDGMENT AND CONSENT**

The undersigned hereby executes and delivers this Acknowledgment and Consent to and regarding the terms, conditions and covenants set forth in the Intercreditor and Subordination Agreement attached hereto (the "**Intercreditor Agreement**"). The undersigned states that it has received a copy of the foregoing Intercreditor Agreement and agrees that it will recognize all rights granted therein to the respective lenders that are party thereto, and that it will not undertake any act or perform any obligation which is not in accordance with the provisions of the Intercreditor Agreement.

The undersigned further acknowledges and agrees that it is not an intended beneficiary under the Intercreditor Agreement.

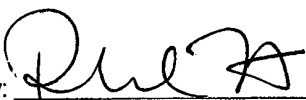
EXECUTED as of May 31, 2019.

"BORROWER"

**PAPERBOX DEVELOPERS, LLC**  
a Utah limited liability company

By: PEG OZII GP, LLC  
a Delaware limited liability company  
its manager

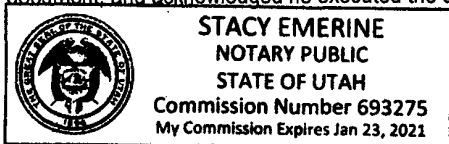
By: PEG CAPITAL PARTNERS, LLC  
a Delaware limited liability company  
its manager

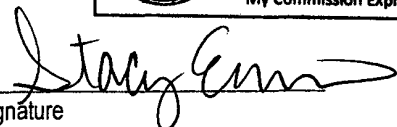
By:   
Name: Robert Fetzer  
Title: Manager

State of Utah )  
County of Utah )  
ss.

On this 28 day of May, in the year 2019, before me Stacy Emerine, a notary public, personally appeared ROBERT FETZER, an individual, a manager of PEG CAPITAL PARTNERS, LLC, a Delaware limited liability company, the manager of PEG OZII GP, LLC, a Delaware limited liability company, the manager of PAPERBOX DEVELOPERS, LLC, a Utah corporation, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)



  
Notary Signature

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

That certain real property located at 340 West 200 South in Salt Lake County, Utah more particularly described as follows:

BEGINNING AT A POINT 100 FEET EAST AND NORTH 0°03'48" WEST 178.4 FEET FROM THE SOUTHWEST CORNER OF BLOCK 66, PLAT "A", SALT LAKE CITY SURVEY; AND RUNNING THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT (RADIUS BEING 173.8 FEET) 120.76 FEET; THENCE SOUTH 89°58'19" WEST 14.28 FEET; THENCE NORTH 70 FEET; THENCE EAST 660 FEET; THENCE SOUTH 130 FEET; THENCE WEST 395 FEET; THENCE SOUTH 21.6 FEET; THENCE WEST 165 FEET TO THE POINT OF BEGINNING.