

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (this "**Agreement**") is made effective as of the _____ day of December, 2019, by and between FIRST HORIZON BANK, a Tennessee banking corporation, formerly known as Capital Bank, a division of First Tennessee Bank National Association, including its successors and/or assigns ("**Lender**"), GONDOLIER PROPERTIES, LLC, a Florida limited liability company ("**Borrower**") and JOHN R. CASSIDY ("**Guarantor**").

R E C I T A L S:

WHEREAS, pursuant to the terms of that certain Loan Agreement (the "**Original Loan Agreement**") dated March 8, 2012, as modified by that certain Loan Modification Agreement (the "**Loan Modification Agreement**") and, collectively with the Original Loan Agreement, the "**Loan Agreement**") dated May 9, 2015, Lender advanced to Borrower: (i) an acquisition loan (the "**Acquisition Loan**") as evidenced by that certain Commercial Loan Note (the "**Original Note**") dated March 8, 2012 in the original principal sum of FOUR MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$4,650,000.00); and (ii) a future advance loan (the "**2015 Future Advance Loan**") as evidenced by that certain Future Advance Promissory Note (the "**2015 Future Advance Note**") dated May 14, 2015 in the original principal sum of TWO MILLION THREE HUNDRED EIGHTY-FIVE THOUSAND SEVEN HUNDRED TWENTY-THREE AND 71/100THS DOLLARS (\$2,385,723.71).

WHEREAS, the Original Note and 2015 Future Advance Note were consolidated and renewed as evidenced by that certain Consolidated, Amended and Restated Promissory Note (the "**Original Consolidated Note**") dated May 14, 2015 in the original principal sum of SIX MILLION FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$6,500,000.00), with a current outstanding principal balance of \$5,606,079.55.

WHEREAS, the Loan (hereinafter defined) is secured by, among other things, the following: (i) a Mortgage and Security Agreement (the "**Original Mortgage**") dated March 8, 2012 and recorded March 9, 2012 under Official Records Instrument Number 2012030681, as modified by that certain Mortgage Modification Agreement and Receipt of Future Advance (the "**2015 Mortgage Modification**") dated May 9, 2015 and recorded May 19, 2015 under Official Records Instrument Number 2015061488, all of the Public Records of Lee County, Florida, and as further modified by that certain Mortgage Modification Agreement and Notice Receipt of Future Advance dated of even date herewith and to be recorded in the Official Records of Sarasota County, Florida (the "**2019 Mortgage Modification**", and collectively with the Original Mortgage and 2015 Mortgage Modification, as the "**Mortgage**"); (ii) that certain Assignment of Leases, Contracts, Rents and Profits (the "**Assignment of Rents**") dated March 8, 2012 and recorded March 9, 2012 under Official Records Instrument Number 2012030682, of the Public Records of Sarasota County, Florida; (iii) that certain Guaranty Agreement (the "**Original Guaranty**") dated March 8, 2012 made by Guarantor and delivered to Lender, as supplemented by that certain Guaranty Agreement (the "**2015 Guaranty Agreement**") dated May 9, 2015 made by Guarantor and delivered to Lender; and (iv) the Loan Agreement, as superseded and replaced by this Agreement; and (iv) other instruments from Borrower to Lender encumbering the Real Property (hereinafter defined).

WHEREAS, Borrower has requested that Lender renew and modify the Original Consolidated Note and advance an additional future advance loan (the “**2019 Future Advance Loan**” and, collectively with the Acquisition Loan and 2015 Future Advance Loan, as the “**Loan**”), to be used for the purposes set forth in Section 2.2, pursuant to the provision for future advances under the Mortgage, and Lender is willing to make the Loan on the terms and conditions set forth in this Agreement and the Loan Documents (as defined in Section 1.13), provided, among other things, that (i) Borrower executes and delivers: (a) this Agreement; (b) a Future Advance Promissory Note (the “**2019 Future Advance Note**”) dated of even date herewith in the original principal sum of TWO MILLION NINETY-THREE THOUSAND NINE HUNDRED TWENTY AND 45/100THS DOLLARS (\$2,093,920.45); (c) a Second Consolidated, Amended and Restated Promissory Note (the “**Second Consolidated Note**”) dated of even date herewith in the original principal sum of SEVEN MILLION SEVEN HUNDRED THOUSAND AND NO/100THS DOLLARS (\$7,700,000.00), consolidating and amending the 2019 Future Advance Note and Original Consolidated Note; and (d) the 2019 Mortgage Modification; and (ii) Guarantor executes and delivers a Guaranty (hereinafter defined) to guarantee payment and performance under the Loan.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises herein made, Lender, Borrower and Guarantor, intending to be legally bound, agree as follows:

1. DEFINITIONS

1.1 “**Completion Date**” shall mean ~~three (3) months after the effective date of the Second Consolidated Note June 30, 2020.~~

1.2 “**Construction Documents**” shall mean any contract between Borrower and the General Contractor which requires the General Contractor to provide, or supervise or manage the procurement of, substantially all labor and materials needed for completion of the Project, and all other contracts, plans or documents concerning the construction of the Improvements and any addenda, amendments, modifications or Change Orders thereto.

1.3 “**Costs**” shall mean all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default as hereinafter defined) by Lender in making, funding, administering or modifying the Loan, in negotiating or entering into any “workout” of the Loan, in entering into any Interest Rate Swap, in connection with any Letter of Credit, or in exercising or enforcing any rights, powers and remedies provided in the Security Documents or any of the other Loan Documents, including reasonable attorneys’ fees, court costs, receiver’s fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Real Property.

1.4 “**General Contractor**” shall mean Stellar Development, Inc., and any successor engaged by Borrower with Lender’s prior written consent, which may be withheld or conditioned in Lender’s sole discretion.

1.5 “**Governmental Authorities**” shall mean the United States, the State in which the Real Property is located and any political subdivision, agency, department, commission, board,

bureau or instrumentality of any of them, including any local authorities, which exercises jurisdiction over the Project or the Real Property.

1.6 “**Guaranty**” or “**Guaranties**” shall mean the Original Guaranty, 2015 Guaranty Agreement and that certain Guaranty Agreement dated of even date herewith made by Guarantor to Lender to absolutely and unconditionally guarantee Borrower’s payment and performance in accordance with the terms and conditions of the Loan Documents.

1.7 “**Improvements**” shall mean site related improvements to be constructed on the Real Property according to the Plans, including all buildings, structures, fixtures and other improvements now or later located on the Real Property.

1.8 “**Interest Rate Swap**” shall mean and refer to any agreements and related documents, whether or not in writing, relating to any rate swap, forward rate transaction, commodity swap, equity index swap or option, interest rate option, cap or collar transaction, or any other similar transaction, including, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into by Borrower (or its affiliate), in connection with the Loan, together with any related schedules and confirmations, as amended, supplemented, superseded or replaced from time to time.

1.9 “**Lien Waivers**” shall mean lien waivers or releases evidencing payment and signed by the General Contractor, subcontractors, suppliers and any other person having construction lien rights.

1.10 “**Loan Documents**” shall mean collectively this Agreement, the 2019 Future Advance Note, the Second Consolidated Note, the Guaranties, the Mortgage, the Assignment of Rents, any Interest Rate Swap entered into in connection with the Loan, any Letter of Credit issued by Lender in connection with the Project (including all related applications and reimbursement documents) and any and all other instruments, documents, certificates or affidavits heretofore, now or hereafter given by Borrower evidencing or securing, or by Guarantor guaranteeing, all or any part of the foregoing, together with any amendments, modifications, renewals and extensions thereof, all of which are incorporated herein by reference and made a part hereof.

1.11 “**Maturity Date**” shall mean April 10, 2027.

1.12 “**Mortgage**” shall mean that certain Mortgage and Security Agreement dated March 8, 2012 and recorded March 9, 2012 under Official Records Instrument Number 2012030681, as modified by that certain Mortgage Modification Agreement and Receipt of Future Advance dated May 9, 2015 and recorded May 19, 2015 under Official Records Instrument Number 2015061488, all of the Public Records of Sarasota County, Florida, as further modified by that certain Mortgage Modification Agreement and Notice of Receipt of Future Advance dated of even date herewith and to be recorded in the Public Records of Sarasota County, Florida, made by Borrower to Lender to secure payment and the performance by Borrower under the Loan Documents.

1.13 “**Obligations**” shall mean all present and future debts, obligations and liabilities of Borrower to Lender arising pursuant to, or on account of, the provisions of this Agreement, the

Second Consolidated Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Second Consolidated Note or the other Loan Documents; (b) to pay all Costs, expenses, indemnification payments, fees and other amounts due at any time under the Security Documents or any of the other Loan Documents, together with interest as provided in the Loan Documents; (c) to pay and perform all obligations of Borrower under any Interest Rate Swap; (d) to pay and perform all obligations of Borrower under any Letter of Credit; (e) all Protective Advances; and (f) to perform, observe and comply with all of the terms, covenants and conditions, expressed or implied, which Borrower is required to perform, observe or comply with pursuant to the terms of the Loan Documents, together with all renewals, extension, modifications, amendments or replacements of any or all of the foregoing.

1.14 “**Plans**” shall mean collectively the plans and specifications prepared by Borrower, General Contractor or any Project architect, and approved by Lender, which describe and depict the labor, materials, equipment, fixtures and furnishings necessary for the completion of the Improvements, including all amendments thereto and modifications thereof made by approved Change Orders.

1.15 “**Project**” means the Real Property, Improvements and other Collateral (as defined in Section 3.1).

1.16 “**Protective Advances**” shall mean all advances, disbursements and expenditures made by Lender, whether before or during the exercise of remedies by Lender, including foreclosure of the Mortgage to:

(a) register, preserve or maintain, repair, restore or rebuild the Improvements; preserve the liens of the Security Documents or the priority thereof; or enforce the Loan Documents;

(b) pay when due, installments of principal, interest or other Obligations; when due, installments of taxes and assessments, and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Real Property or any part thereof; other Obligations as authorized by the Loan Documents; or any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of the Lender’s interests in the Real Property;

(c) reasonable attorneys’ fees and other out-of-pocket costs incurred by Lender under the Loan Documents;

(d) any Trustee’s fees and costs under the Mortgage, including reasonable attorneys’ fees incurred by Trustee;

(e) reasonable out-of-pocket expenses incurred and expenditures made by Lender for premiums for insurance coverages required by the Loan Documents, whether or not Lender or a receiver is in possession, if reasonably required to protect the Property.

All Protective Advances shall be deemed to be a part of the Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate (as defined in the Second Consolidated Note).

1.17 “**Real Property**” shall mean that certain land located in Sarasota County, Florida as more specifically described in the Mortgage and in **Exhibit “A”** hereto.

1.18 “**Security Documents**” shall mean the Mortgage, Assignment of Rents, any UCC financing statements, and any and all other Loan Documents which secure the Obligations, together with all amendments, modifications, replacements or substitutions therefore.

1.19 “**Title Company**” shall mean the issuer of the title insurance policy insuring the first mortgage lien of the Mortgage.

2. THE LOAN; CONDITIONS

2.1 In accordance with the Loan Documents and subject to the terms, conditions and limitations thereof, Lender hereby agrees to lend to Borrower and Borrower hereby agrees to borrow from Lender the Loan, which borrowing shall be evidenced by the Second Consolidated Note. The Loan shall bear interest at the rate or rates set forth in the Second Consolidated Note and shall be secured by the Mortgage and other Loan Documents.

2.2 Borrower shall utilize the proceeds of the 2019 Future Advance Loan for the purpose of funding direct and indirect costs of Borrower’s construction of the Improvements according to the Plans.

2.3 Lender’s obligation to make the Loan and the effectiveness of this Agreement shall be expressly conditioned upon satisfaction of the following conditions:

(a) That this Agreement, the Second Consolidated Note and any other documents, instruments or affidavits required hereunder shall each have been properly executed and delivered to Lender.

(b) No material adverse change in the financial condition of Borrower or Guarantor has occurred since the date of the most recent financial statements and information furnished to Lender.

(c) Intentionally Deleted.

(d) Intentionally Deleted.

(e) Borrower shall have furnished Lender, at Borrower’s expense, such evidence as Lender shall require regarding the truth of the representations and warranties set forth herein and in the other Loan Documents, including, without limitation, opinions of Borrower’s outside legal counsel, opinions and certificates of Borrower’s independent certified public accountants, surveys, appraisals, environmental audits by qualified environmental engineers selected by Lender and reports of other independent consultants selected by Lender. All such evidence must be in form and content satisfactory to Lender.

(f) Borrower shall have paid to Lender a one-time non-refundable loan origination fee in the amount of \$27,500.00.

(g) Borrower shall have provided evidence satisfactory to Lender that Borrower's cash equity paid or invested in the Project is not less than fifteen percent (15%). Notwithstanding anything in this Agreement or the Loan Documents to the contrary, Lender shall not be required to disburse any portion of the proceeds of the Loan unless and until the Borrower's cash equity has been advanced and invested in the Project to the Lender's satisfaction.

(h) Intentionally Deleted.

(i) Intentionally Deleted.

(j) Intentionally Deleted.

(k) Lender shall have received verification and satisfactory evidence of Borrower's payment of all real estate taxes, assessments and other governmental charges or levies which are or may become a lien against the Real Property.

3. COLLATERAL

3.1 The repayment by Borrower of the Loan, as evidenced by the Second Consolidated Note, and the performance by Borrower of all obligations under the Loan Documents, shall be secured by: (a) the Real Property; (b) all building materials, lumber, appliances, furniture, furnishings, supplies, inventory, equipment and other personal property owned by Borrower of any kind, now or hereafter existing on the Real Property or in connection therewith; (c) any deposit balances, accounts, items, certificates of deposit and monies of Borrower in possession of or on deposit with Lender; and (d) all rents, issues, leases, and profits now or hereafter existing in connection with the Real Property. The property described in subsections (a), (b), (c) and (d) above is sometimes collectively referred to herein as the "**Collateral.**" Borrower shall execute and deliver, or shall cause to be executed and delivered, such documents relating to the Collateral as Lender or the Title Company may from time to time request.

3.2 Provided that no Event of Default (as defined in Section 8.1) exists, Lender agrees to release the lien of the Mortgage from the Collateral upon indefeasible repayment in full of all obligations under the Loan.

4. BORROWER REPRESENTATIONS AND WARRANTIES

As an inducement to Lender to enter into this Agreement and make the Loan, Borrower and Guarantor (as applicable) represent and warrant to Lender as follows:

4.1 Borrower is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business and is in good standing in the state in which the Project and Real Property are located, and has full power and authority to consummate the transactions contemplated by the Loan Documents.

4.2 The execution, delivery and performance by Borrower of all Loan Documents have been duly authorized by all requisite action on the part of Borrower and do not and will not (i) violate any law or any judgment, order or ruling of any court or Governmental Authorities, or (ii) conflict with, result in a breach of, or constitute, following notice or lapse of time or both, a default under any indenture, agreement or other instrument to which Borrower is a party or by which Borrower or any of its property is bound.

4.3 The Loan Documents are, in all respects, legal, valid and binding in accordance with their terms and have been duly authorized, executed and delivered.

4.4 The Plans and the construction and anticipated use of the Improvements do and will comply with all applicable restrictive covenants, zoning ordinances, building laws and codes, and other applicable laws, regulations and requirements, including but not limited to those regarding environmental matters and access and facilities for persons with disabilities. All required permits and approvals in connection with the foregoing have or will be obtained prior to commencement of construction.

4.5 All utility services necessary for the construction and full utilization of the Improvements for their intended purposes are presently available at the boundaries of the Real Property through public or unencumbered private easements or rights of way and are available for connection to the Improvements at ordinary costs.

4.6 Access necessary for the construction and full utilization of the Improvements for their intended purposes is presently available to the Improvements over streets or roads which have been dedicated to public use or private access rights thereover.

4.7 There are no pending or threatened actions or proceedings before any court or administrative body or any Governmental Authorities that may, individually or collectively, adversely affect the financial condition or business operations of Borrower or Guarantor.

4.8 Each financial statement delivered to Lender in connection with the Loan is true and correct in all material respects, has been prepared in accordance with generally accepted accounting principles consistently applied, and fairly represents the financial condition of its subject, and no material, adverse change has occurred in the financial condition of its subject since the date thereof.

4.9 All federal, state and other tax returns required by law to be filed have been completed in full and have been duly filed, and all taxes, assessments and withholdings shown on such returns or billed have been paid, and Borrower maintains adequate reserves and accruals in respect of all such federal, state and other taxes, assessments and withholdings. There are no unpaid assessments pending against Borrower for any taxes or withholdings, and Borrower knows of no basis therefor.

4.10 The obligations under this Agreement and of Borrower under the Second Consolidated Note are not subordinated in right of payment to any other obligation.

4.11 The plans and specifications for the Improvements have been or will be approved by each Governmental Authority having jurisdiction over the Project and all building permits and other required permits and approvals have been or will be issued and received.

4.12 No event has occurred and is continuing which is, or which with the giving of notice or lapse of time or both would be, an Event of Default of this Agreement.

4.13 Except as otherwise expressly disclosed by Borrower to Lender in writing on the date of this Agreement: (i) to Borrower's and Guarantor's knowledge, no "**Hazardous Substance**" (as that term is defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended [**"CERCLA"**]) has been released, discharged, disposed of, or stored on any of Borrower's owned or leased real or personal property by Borrower, by any third party, or by any predecessor in interest or title to Borrower; (ii) Borrower and all of Borrower's properties, to Borrower and Guarantor's knowledge, are in compliance with all applicable local, state and federal environmental laws and regulations; (iii) no notice has been served on Borrower by any Governmental Authorities or any individual or entity claiming violation of any environmental protection law or regulation, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources; (iv) no Hazardous Substance is produced or used in Borrower's business, except for those used by Borrower or tenants of the Property in the ordinary and customary course of business and in compliance with all Environmental Laws (as defined in the Mortgage); and (v) to Borrower's knowledge, no improvement on any real property owned or leased by Borrower contains any asbestos, including, without limitation, asbestos insulation on ceilings, piping or structural members or supports.

4.14 Intentionally Deleted.

4.15 Each request for disbursement under this Agreement shall constitute an affirmation that the representations and warranties of this Section 4 are true and correct on the date of the request and on the date of the disbursement, with the same effect as if made on and as of such dates, as well as on and as of the date hereof.

5. ADVANCES

5.1 Subject to the provisions of this Agreement, Lender will advance and Borrower will accept the 2019 Future Advance Loan to fund Borrower's construction of the Improvements.

5.2 Lender shall not be obligated at any time to disburse any proceeds of the 2019 Future Advance Loan unless the following conditions precedent have been satisfied and Borrower shall have delivered to Lender evidence, satisfactory to Lender, of such satisfaction:

(a) All Loan Documents required by Lender and all Construction Documents shall have been delivered to the proper parties and all conditions and requirements set forth therein shall have been and shall continue to be satisfied, including, without limitation, any conditions to disbursement as provided herein.

(b) No Event of Default shall have occurred and not been waived by Lender, nor shall any event or condition which, with the giving of notice or lapse of time or both, would constitute an Event of Default under this Agreement have occurred and be continuing.

(c) No material adverse change shall have occurred in the financial condition of Borrower or Guarantor.

(d) The Real Property shall not have been injured or damaged unless, in the reasonable judgment and opinion of Lender, sufficient insurance proceeds shall have been received, and satisfactory arrangements shall have been made, for the repair of the same.

(e) Intentionally Deleted.

(f) No construction lien or other encumbrance (except the Loan Documents and as permitted thereby) shall have been filed and remain in effect against the Real Property or any portion thereof and Lender shall have received Lien Waivers from persons furnishing labor, materials or services to the Real Property and that have provided statutory Notices to Owner.

(g) Intentionally Deleted.

(h) Intentionally Deleted.

(i) Intentionally Deleted.

(j) Lender shall have received the effective, paid-up insurance policies then required by Lender pursuant to this Agreement or the Loan Documents, including, without limitation, evidence that the Improvements being constructed are covered by Borrower's builders risk insurance policy.

(k) Lender shall have received a survey of the Real Property and all Improvements thereon by a registered professional surveyor satisfactory to Lender and the Title Company, showing a state of facts, and in form and content, reasonably satisfactory to Lender.

(l) Lender shall have received a copy of the notice of commencement for the Improvements, which notice of commencement must have been recorded after the Mortgage.

(m) Each advance under this Agreement shall constitute an affirmation that the conditions precedent set forth in Section 2.3 remain met and true and correct on the date of the request and on the date of the disbursement.

5.3 Subject to the terms and condition of this Agreement, Lender agrees to make 2019 Future Advance Loan disbursements through the Completion Date up to the face amount of the Second Consolidated Note after Lender's receipt of a completed draw request on a form pre-approved by Lender and which shall be executed and certified by Borrower and set forth the amount of the advance requested in each instance (a "**Draw Request**"). Each Draw Request shall be in such detail and supported by such receipts, invoices and supporting documents, as reasonably required by Lender, and shall attach sworn statements and Lien Waivers, as well as a list of

proposed payees. Lender may notify Borrower of its approval of a Draw Request by electronic mail or another method of notice as provided herein.

5.4 No disbursement shall constitute an approval or acceptance by Lender of any construction work or constitute a waiver of any condition precedent to the obligation of Lender to make any further disbursement or preclude Lender from thereafter declaring the failure of Borrower to satisfy such condition precedent to be a default. All conditions precedent to the obligation of Lender to make any disbursement are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lender will refuse to make any disbursement in the absence of strict compliance with such conditions precedent. All requirements of this Agreement may be waived by Lender, in whole or in part, at any time.

5.5 Lender shall have the right, but not the obligation, to make disbursements directly to the General Contractor, subcontractor(s), materialmen or other suppliers providing labor, services or materials or to whom Borrower is otherwise obligated in connection with the Improvements, whether or not Borrower included the amount thereof in any Draw Request, and the execution of this Agreement by Borrower constitutes an irrevocable direction and authorization for Lender to so disburse.

6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, so long as it may borrow under this Agreement or so long as any indebtedness remains outstanding under the Loan or under the Second Consolidated Note, Borrower shall:

6.1 Cause the commencement of construction of the Improvements within thirty (30) days after Loan closing and shall thereafter continually prosecute the work and complete the Improvements in substantial conformity with the Plans and the Budget and in compliance with all legal requirements and restrictions, except during the existence of delays not more than thirty (30) days caused by events beyond Borrower's control and cause completion of the Project on or before the Completion Date, time being of the essence. Borrower will, within fifteen (15) days after Borrower first obtains knowledge thereof, correct any material defect in the Improvements, any material departure from the Plans, legal requirements or good construction practices, and any encroachment by any Improvements or structure on any property line, setback line, easement or other restricted area. Borrower will keep the Real Property free at all times from all liens for services, labor, materials or indebtedness (other than the Loan and any Permitted Encumbrances, as defined in the Mortgage).

6.2 Submit surveys of the Real Property and Improvements and all other items required by the Loan Documents to Lender for its reasonable approval, and Lender shall have no obligation to make any disbursements hereunder until it has approved those items. Borrower agrees the Plans, Budget and the Construction Documents will not be materially modified or otherwise changed, in whole or in part, without the prior written consent of Lender. Borrower hereby assigns to Lender as further security all of Borrower's rights and interests, but not its duties, obligations or liabilities in, under and to the Plans and Construction Documents. Borrower agrees to perform all of its obligations under the Construction Documents in a timely manner.

6.3 Intentionally Deleted.

6.4 Intentionally Deleted.

6.5 Borrower shall make to Lender such payments of principal and interest at the rate(s), on the date(s), and calculated by the method, set forth in the Second Consolidated Note. Through the Completion Date, Borrower shall make monthly interest only payments of all accrued interest pursuant to the Second Consolidated Note.

6.6 Permit Lender and its representatives to enter upon the Real Property and inspect the Project and all materials to be used in the construction thereof and examine all Plans which are or may be kept at the Project. Borrower will cooperate and cause General Contractor to cooperate with Lender in the performance of such inspections. At the time of each such inspection, Borrower will make available to Lender on demand, daily log sheets covering the period since the immediately preceding inspection, showing the date, weather, subcontractors on the job, number of workers and status of construction.

6.7 Pay and discharge all taxes, assessments, fees, withholdings and other governmental charges or levies imposed upon it, or upon its income and profits, or upon any property belonging to it, prior to the date on which penalties attach thereto, unless the legality thereof shall be promptly and actively contested in good faith by appropriate proceedings, and unless adequate reserves for such liability are maintained by Borrower pending determination of such contest.

6.8 Promptly notify Lender in writing of any litigation or other proceedings before any court or governmental or administrative authority which affects any part of the Project or completion thereof and of any such litigation or proceedings against the Borrower or affecting Borrower's other assets which would, if successful, adversely affect Borrower or such other assets or where the amount exceeds FIFTY THOUSAND AND NO/100THS DOLLARS (\$50,000.00).

6.9 Obtain and maintain (or will cause to be obtained and maintained) such insurance as Lender may reasonably require, including, but not limited to, flood insurance (if applicable) loan title insurance, builder's risk insurance, hazard insurance, public liability insurance, worker's compensation insurance (after slab is poured), and business interruption or rent loss insurance (consequential loss insurance). Insurance coverages shall be in such amounts and on such terms as reasonably required by Lender, shall name Lender as mortgagee and lender loss payee, shall be issued by Borrower's insurance companies, as determined by Borrower, and shall be kept in full force and effect. All insurance may be pursuant to Borrower or its affiliate's umbrella or aggregate policies. Borrower will promptly deliver satisfactory evidence of insurance to Lender prior to closing and any subsequent renewal dates, together with evidence of premium payments.

6.10 Perform or take, on request of Lender, such action as may be necessary or advisable to perfect or confirm the first lien priority of the Mortgage or any other lien or security interest of Lender in the Collateral or otherwise to carry out the intent of this Agreement; provided that Borrower's obligations are not expanded or increased in any material fashion.

6.11 Pay or reimburse Lender for all Loan closing and origination costs, including, but not limited to, appraisals, attorneys' fees incurred by Lender in making the Loan, preparing or

enforcing the Loan Documents or in collecting the Loan and any other sum due under the Second Consolidated Note or this Agreement after any Event of Default by Borrower, recording taxes and title insurance premiums. Borrower shall at its cost provide Lender with a mortgagee title insurance policy acceptable to Lender and such endorsements as requested by Lender, including Florida Form 9 and construction loan update endorsements.

6.12 Comply with all applicable present and future local, state and federal laws, including, without limitation, environmental laws and regulations; notify Lender immediately if any Hazardous Substance is released, discharged, disposed of, stored, or discovered on any real or personal property owned or leased by Borrower; notify Lender in writing within five (5) business days after Borrower receives notice from any Governmental Authorities or any individual or entity claiming violation of any environmental protection law or regulation, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources; and permit Lender from time to time to observe Borrower's operations and, upon reasonable cause, to perform tests (including soil tests and ground water tests) for any Hazardous Substance on the Collateral or any part thereof.

6.13 Notify Lender in writing if any Event of Default or event which, with the giving of notice or lapse of time or both, would constitute an Event of Default hereunder shall occur, and specify in detail the nature of the Event of Default or event and what action Borrower has taken or proposes to take to remedy the same.

6.14 Notify Lender of any and all Claims of Lien, as those terms are defined in Chapter 713, Florida Statutes, within five (5) business days of receipt thereof, and comply with all provisions of the Florida Construction Lien Law, including but not limited to payment and notice provisions contained therein. Borrower shall save and hold Lender harmless from the claims of any mechanics' liens or equitable liens and pay promptly upon demand any loss or losses which Lender may incur as a result of the filing of any such liens, including reasonable costs of defending the same and Lender's reasonable attorneys' fees. Borrower hereby authorizes Lender to demand, on Borrower's behalf, the statement of account referred to in Section 713.16(2), Florida Statutes, of any potential lienor filing a Notice to Owner. It is specifically understood and agreed, however, that Lender's right to request such statements of account will in no way impose any obligation on Lender to use such authority and that the exercise of such authority on one or more occasions shall not create or imply any obligation on such party to exercise such authority on subsequent occasions.

6.15 Maintain all of Borrower's primary deposit accounts with Lender at all times during the term of the Loan.

6.16 Deliver or cause to be delivered to Lender:

(a) quarterly, within thirty (30) days from the end of each quarter, an updated certified tenant rent roll, together with all cash flows and income with respect to the Real Property, its ownership and operation and all tenants occupying a part or portion thereof;

(b) quarterly, within thirty (30) days from the end of each quarter, a quarterly financial statement which shall disclose all of Borrower's assets and liabilities, including a detailed listing of all real estate holdings and associated rent rolls and listings, as well contingent liabilities, sources and amounts of income and similar information, and be in reasonable detail and submitted on a form provided by Lender or in a form acceptable to Lender;

(c) annually, within thirty (30) days after the date of filing, but no later than April 30 (or October 30 if Borrower or Guarantor files for an extension) of each calendar year, income tax returns (state and federal) for Borrower and Guarantor, together with all schedules, including K-1s, attached thereto and all requests for extensions;

(d) from time to time during the term of the Loan, all lease agreements with tenant(s) occupying a part or portion of the Real Property including, without limitation, copies of all new lease agreements, as well as copies of all extensions, modifications or amendments of all existing leases with respect to tenant(s) occupying a part or portion of the Real Property, together with such additional or further information as required and requested by Lender with respect to the Real Property and all tenants, leases and its ownership and operation;

(e) from time to time during the term of the Loan, such additional information as Lender may reasonably request, including, without limitation, financial statements and all other information pertaining to Borrower's financial condition and the ownership and operation of the Real Property;

(f) annually, within ninety (90) days from the end of each calendar year, an annual financial statement for Guarantor which shall disclose all assets and liabilities and include contingent liabilities, liquidity verification of bank or brokerage statements, sources and amounts of income and similar information, and be in reasonable detail and submitted on a form provided by Lender or in a form acceptable to Lender;

(g) annually, within one hundred twenty (120) days after the date of filing, income tax returns (state and federal) for Neurosurgical Associates - Cassidy & Guerin, M.D., P.A.;

(h) from time to time during the term of the Loan, such additional information as Lender may reasonably request for verification of liquidity, including, without limitation, financial statements, bank and brokerage statements and other information pertaining to Guarantors' financial condition.

All such financial information shall be signed and certified by Borrower and Guarantor, shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis, and shall be in all other respects in form and substance satisfactory to Lender as determined by Lender in its reasonable discretion.

6.17 To the extent not provided prior to closing, Borrower shall provide, within thirty (30) days of the date hereof, fully executed Subordination, Non-Disturbance and Attornment Agreements in form and substance acceptable to Lender from each tenant occupying or entitled to occupy the Real Property as of the date hereof.

6.18 Maintain on a consolidated basis a Debt Service Coverage Ratio of at least 1.30:1.0, beginning with fiscal year end 2020. “**Debt Service Coverage Ratio**” means the ratio of Net Operating Income to Debt Service Requirement. “**Net Operating Income**” is defined as all income, collected from the ownership and operation of the Property including rents and reimbursed common area maintenance charges, reimbursed insurance, reimbursed taxes, and other required pass-throughs, but excluding sales, extraordinary income resulting from casualty or condemnation (other than rental/business interruption insurance proceeds), and loss or lease termination payments of tenants. Net Operating Income shall be net of Vacancy Reserve, all Operating Expenses and a Capital Reserve. “**Vacancy Reserve**” is defined as the greater of the actual vacancy but not less than 5.0%. “**Operating Expenses**” means, the total of all expenses actually paid or payable, of whatever kind relating to the ownership, operation, maintenance or management of the Property, including, but not limited to, utilities, ordinary repairs and maintenance, insurance premiums, ground rents, if any, license fees, property taxes, management fees equal to the greater of 5% of *Actual Rent Collected* or the management fees actually paid under any management agreement, advertising expenses, payroll and related taxes, operational equipment or other lease payments as approved by Lender, but specifically excluding depreciation and amortization, debt service on the Loan, and any item of expense that would otherwise be covered by the provisions hereof but which is paid by any tenant under such tenant’s Lease or other agreement. “**Capital Reserve**” for retail space is defined as \$0.25 psf. “**Debt Service Requirement**” means the sum of all principal payments paid by Borrower on all obligations for money borrowed, capital leases, bonds, indentures, notes, letters of credit or similar instruments and all obligations upon which interest charges are customarily paid plus Interest Expense, as determined and included in the financial results for each annual twelve-month accounting period.

6.19 Intentionally Deleted.

6.20 Provide to Lender from time to time such other information and documentation as Lender shall reasonably require.

7. NEGATIVE COVENANTS

Borrower and Guarantor, as applicable, covenant and agree that, without the prior written consent of Lender, so long as Borrower may borrow under this Agreement or so long as any indebtedness remains outstanding under the Loan or under the Second Consolidated Note, Borrower and Guarantor, as applicable, shall not:

7.1 Use any proceeds of the Loan except for the purposes stated in this Agreement.

7.2 Permit or cause the change in any ownership interest of Borrower without the prior written consent of Lender.

7.3 Grant any lien on or security interest in, or otherwise encumber, any of the Collateral, and, except for liens for taxes not yet due and payable or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves are being maintained by Borrower and those liens disclosed to Lender by Borrower in writing, and specifically consented to by Lender, prior to the execution of this Agreement, Borrower shall not permit to exist any lien, security interest or other encumbrance on any of the Collateral.

7.4 Borrower shall not incur additional indebtedness, whether secured or unsecured, direct or contingent (including guaranteeing any obligation), without the express written consent of Lender, except trade and operational indebtedness incurred with trade creditors in the ordinary course of its business of owning and operating the Project in such amounts as are normal and reasonable under the circumstances, provided that such indebtedness is not in excess of FIFTY THOUSAND AND NO/100THS DOLLARS (\$50,000.00) annually and is paid when due.

7.5 Permit or cause the filing or recordation of any easements, covenants or restrictions against all or any portion of the Real Property, except as otherwise expressly consented to by Lender in writing.

7.6 Release, discharge, dispose of, store, accept or receive for storage or disposal, or allow to be stored or disposed of, any Hazardous Substance on or in the Real Property, except as otherwise expressly consented to by Lender in writing; or release, discharge, use, transport, or dispose of any Hazardous Substance in an unlawful manner.

8. EVENTS OF DEFAULT AND REMEDIES

8.1 **“Event of Default”** means the occurrence of one or more of the following:

(a) A failure by Borrower to make any payment of principal or interest or any combination thereof on the Second Consolidated Note when due;

(b) The material incorrectness of any representation or warranty made by Borrower or Guarantor to Lender in any of the Loan Documents, any financial statement or any other document delivered to Lender in connection with the Loan evidenced by the Second Consolidated Note;

(c) The occurrence of an event of default under any Loan Document;

(d) A reasonable determination by Lender that the condition of the Real Property has deteriorated to the degree that Lender’s security has been materially impaired;

(e) Intentionally Deleted;

(f) The sale (by land contract or otherwise), assignment, mortgaging, leasing, encumbering, refinancing or conveyance of the Real Property, or any portion thereof or legal or equitable interest therein, except as otherwise expressly permitted in the Loan Documents;

(g) A construction lien is filed upon the Real Property, which lien is not discharged or bonded off within thirty (30) days after such filing;

(h) A failure by Borrower to keep in full force and effect or obtain and thereafter keep in full force and effect all certificates, licenses, franchise or management agreements, permits and other agreements necessary in Lender’s reasonable discretion, for the lawful occupancy, use and operation of the Real Property for its intended purposes;

(i) A failure by Borrower to keep in effect the policies of insurance required by this Agreement, the Mortgage or any other Loan Document;

(j) A failure by Borrower or Guarantor to timely provide any financial statements and other financial information required in this Agreement, the Guaranties or any Loan Document, if any;

(k) The change in the identity of any of the equity owners of Borrower (except for estate planning purposes with Lender's prior written consent), or the pledging or encumbering of any of the ownership or membership interests of any of the equity owners of Borrower;

(l) The occurrence of any event of default, acceleration, or commencement of foreclosure under any other mortgage, lien or encumbrance on the Real Property, prior or subordinate to the lien of the Mortgage;

(m) The entry of any judgment or lien in excess of FIFTY THOUSAND AND NO/100THS DOLLARS (\$50,000.00) against Borrower or Guarantor by or in favor of any third person which judgment or lien has a materially adverse effect upon Borrower, Guarantor or the Real Property and which is not satisfied, discharged or bonded off within thirty (30) days from the date of entry of said judgment or lien;

(n) The appointment of a receiver, trustee, custodian, conservator, or liquidator, or other similar official for Borrower, or Guarantor, any of the Real Property, or any other property of Borrower or Guarantor;

(o) Borrower or Guarantor shall generally not pay debts as they become due or shall admit in writing inability to pay debts, or shall make a general assignment for the benefit of creditors;

(p) Borrower or Guarantor shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Borrower or Guarantor or any debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors;

(q) Any case, proceeding or other action commenced against Borrower or Guarantor seeking to have an order for relief entered against Borrower or Guarantor, as debtor, or seeking a reorganization, arrangement, adjustment, liquidation, dissolution or composition of Borrower or Guarantor or any debts, under any law relating to bankruptcy, insolvency, reorganization or debtor relief laws, or seeking an appointment of a receiver, trustee, custodian or other similar official for Borrower or Guarantor or for all or any of the Real Property, or any other property of Borrower or Guarantor, and such case, proceeding or other action (i) results in the entry of an order for relief against Borrower or Guarantor or (ii) remains undismissed for a period of sixty (60) days;

(r) Borrower or Guarantor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its

property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall have suffered or permitted, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings which is not vacated within sixty (60) days from the date thereof;

(s) An occurrence of any event or condition which results in a default in the payment of any other indebtedness or the performance of any other obligation of Borrower or Guarantor, or any affiliate of either, to Lender;

(t) The liquidation, termination or dissolution of Borrower;

(u) At Lender's option, the death of, or appointment of a guardian for, Guarantor and failure of Borrower to provide to Lender, within thirty (30) days after such death or appointment, a substitute guarantor or additional collateral, either of which must be satisfactory to Lender in its sole discretion; or

(v) A failure by Borrower or Guarantor to comply with any of the other terms or conditions specified herein or in any other of the Loan Documents or Borrower's or any Guarantor's failure to perform any of their covenants under the Loan Documents.

8.2 Lender agrees to provide notice to Borrower of any Event of Default under Section 8.1(a) and Borrower shall have five (5) business days after the effective date of the notice to cure all such defaults.

8.3 Lender agrees to provide notice to Borrower of any Event of Default under Section 8.1(b) through (v) and in such notice specify the default(s) claimed and the actions(s) required to cure such default(s), and Borrower shall have fifteen (15) business days after the effective date of such notice to cure all such defaults.

9. MISCELLANEOUS

9.1 No delay or failure on the part of Lender in the exercise of any right, power or privilege granted under this Agreement or the Second Consolidated Note, or available at law or in equity, shall impair any such right, power or privilege or be construed as a waiver of any Event of Default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege. No waiver shall be valid against Lender unless made in writing and signed by Lender, and then only to the extent expressly specified therein.

9.2 All notices and communications hereunder shall be in writing, delivered by hand, overnight courier or sent by first-class or certified mail, postage prepaid to the following addresses:

If to Lender: First Horizon Bank, a Tennessee banking corporation,
formerly known as Capital Bank, a division of First
Tennessee Bank National Association
6435 Naples Boulevard
Naples, FL 34109
Attn: Meriem L. Allgood

If to Borrower: Gondolier Properties, LLC
1435 E. Venice Avenue, #104
Venice, FL 34292
Attn: John R. Cassidy

If to Guarantor: John R. Cassidy
1435 E. Venice Avenue, #104
Venice, FL 34292

If mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, then such notice shall be effective upon its deposit in the mail. Notice given in any other manner shall be effective only if and when received by the addressee. Any party may change its addresses by notice to the other parties in the manner provided herein.

9.3 This Agreement and the Second Consolidated Note shall be governed by and construed and enforced in accordance with the substantive laws of the United States and the State of Florida, without regard to that state's rules governing conflicts of law.

9.4 Lender, Borrower and Guarantor hereby agree that all actions or proceedings initiated or arising directly or indirectly out of this Agreement shall be litigated in the Circuit Court or United States District Court located in Sarasota County, Florida. Borrower and Guarantor hereby expressly submit and consent in advance to such jurisdiction in Sarasota County, Florida in any action or proceeding commenced by Lender and waive any claim that Sarasota County, Florida is an inconvenient forum or an improper forum based on lack of venue. The exclusive choice of forum set forth in this section shall not be deemed to preclude the enforcement by Lender of any judgment obtained in any other forum or the taking by Lender of any action to enforce the same in any other appropriate jurisdiction.

9.5 All representations and warranties contained in this Agreement or made or furnished on behalf of Borrower in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loan and shall continue in effect until the Loan and the interest thereon are paid in full.

9.6 This Agreement shall bind and inure to the benefit of Borrower and Lender, and their respective successors and assigns; provided, however, Borrower shall have no right to assign its rights or obligations hereunder to any person or entity.

9.7 Time is of the essence in the payment and performance of every term and covenant of this Agreement and the Second Consolidated Note.

9.8 This Agreement, the Second Consolidated Note, the Mortgage and the other Loan Documents contain the entire agreement between the parties hereto regarding the Loan and the subject matter hereof. No oral representations or statements shall be binding on Lender, and no agent of Lender has the authority to vary the terms of this Agreement except as set forth herein. This Agreement may be amended or modified, and Borrower may take any action herein prohibited, or omit to perform any action required to be performed by it, only if Borrower shall

obtain the prior written consent of Lender to such amendment, modification, action or omission to act, and no course of dealing between Borrower and Lender shall operate as a waiver of any right, power or privilege granted under this Agreement, under the Second Consolidated Note or the Loan Documents, or available at law or in equity.

9.9 All rights, powers and privileges granted hereunder shall be cumulative, and shall not be exclusive of any other rights, powers and privileges granted by the Second Consolidated Note or any other document or agreement, or available at law or in equity.

9.10 All conditions to the obligations of Lender to make advances hereunder are imposed solely and exclusively for the benefit of Lender and its assigns and no other person will have standing to require satisfaction of such conditions or be entitled to assume that Lender will not make disbursements in the absence of strict compliance with any or all thereof and no other person, under any circumstances, will be deemed to be beneficiary of such conditions, any or all of which may be waived in whole or in part by Lender at any time if Lender in its sole discretion deems it advisable to do so.

9.11 Lender is not the agent or representative of Borrower, and Borrower is not the agent or representative of Lender, and nothing in this Agreement will be construed to make Lender liable to anyone for goods delivered or services performed upon the Property or for debts or claims accruing against Borrower. Neither anything contained herein nor the acts of the parties hereto will be construed to create a partnership or joint venture between Borrower and Lender.

9.12 Borrower hereby agrees to indemnify Lender and its officers, directors, agents and attorneys against, and to hold Lender and all such other persons harmless from, any claims, demands, liabilities, costs, damages, and judgments (including, without limitation, liability under CERCLA, the Federal Resource Conservation and Recovery Act, or other environmental law or regulation, and costs of defense and attorneys' fees) resulting from any representation or warranty made by Borrower or Guarantor or on their behalf pursuant to Section 4 of this Agreement having been false when made, or resulting from any breach of the covenants set forth in Section 5 or Section 6 of this Agreement. This Agreement of indemnity shall be a continuing agreement and shall survive payment of the Loan and the Second Consolidated Note and termination of this Agreement.

9.13 This Agreement, the Loan Documents and any other instrument now or hereafter evidencing, securing or in any manner affecting the Loan may be endorsed, assigned and transferred in whole or in part by Lender, and any such holder, participant or assignee of the same will succeed to and be possessed of the rights of Lender under all of the same to the extent transferred and assigned. Borrower shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Loan Documents as such person(s) would have if such person(s) were Lender hereunder. Lender may disseminate any information it now has or hereafter obtains pertaining to the Loan, including any security for the Loan, any credit or other information on the Real Property (including environmental reports and assessments), Borrower, any of Borrower's principals or any Guarantor, to any actual or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender, to any actual or prospective

counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and the Loan, or to any other party as necessary or appropriate in Lender's reasonable judgment.

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

[remainder of page intentionally left blank]

[signatures on following page]

(signature page to Construction Loan Agreement)

IN WITNESS WHEREOF, Borrower, Guarantor and Lender have executed and delivered this Agreement effective the day and year first above written.

BORROWER:
GONDOLIER PROPERTIES, LLC, a Florida
limited liability company

LENDER:
FIRST HORIZON BANK, a Tennessee
banking corporation, formerly known as
Capital Bank, a division of First Tennessee
Bank National Association

By: _____

By: _____

Print Name: John R. Cassidy

Print Name: Meriem Allgood

Title: Member

Title: Senior Vice President

GUARANTOR:

John R. Cassidy

EXHIBIT “A”

(Real Property)