

SETTLEMENT AND AGREEMENT FOR DEED-IN-LIEU OF FORECLOSURE

DATE: _____

PARTIES: Borrower: **G&I IX MJW LAKE POINT III & IV LLC**
a Delaware limited liability company

Borrower's c/o DRA Advisors LLC
Address: 220 East 42nd Street
New York, NY 10017

Guarantor: **DRA GROWTH AND INCOME MASTER FUND IX**
LLC, a Delaware limited liability company

Guarantor's c/o DRA Advisors LLC
Address: 220 East 42nd Street
New York, NY 10017

Holder: _____

Holder's
Address: _____

RECITALS:

A. Borrower and CIBC Inc., a Delaware corporation ("**Lender**") entered into that certain Loan Agreement dated November 5, 2018 (as renewed, extended, modified, amended or restated from time to time, the "**Loan Agreement**"; all capitalized terms not otherwise defined herein shall have the meaning provided in the Loan Agreement if defined therein), pursuant to which Lender agreed to loan Borrower \$13,815,000.00 for the purposes set forth therein (the "**Loan**").

B. As evidence of the Loan, Borrower executed that certain Promissory Note dated November 5, 2018 (as renewed, extended, modified, amended or restated from time to time, the "**Note**"), in favor of Lender in the maximum principal amount of \$13,815,000.00.

C. As security for repayment of the Loan, Borrower executed that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated November 5, 2018, (as amended, assigned, supplemented, modified, restated, renewed and extended to date, and as same may be further amended, supplemented, modified, renewed and/or extended from time to time, the "**Mortgage**"), in favor of Lender, granting Lender a first priority lien and security interest in the real property ("**Real Property**") and personal property ("**Collateral**") described therein (collectively, the "**Property**").

D. Guarantor guaranteed certain recourse carve out obligations related to the Loan by executing that certain Recourse Carve-Out Guaranty dated November 5, 2018, for the benefit of Lender (collectively, the "**Guaranty**").

E. The Note, the Loan Agreement, the Mortgage, and the Guaranty, as amended from time to time, are sometimes referred to herein as the “**Loan Documents**.” Guarantor and Borrower are sometimes severally and collectively referred to herein as the “**Borrower Group**.”

F. On or about March 15, 2024, Lender transferred its rights under the Loan Documents to Fund Investment 169, LLC, a Michigan limited liability company (“Fund Investment 169”). On or about _____, Fund Investment 169 transferred its rights under the Loan Documents to Holder.

G. Borrower and Guarantor are in default under the Loan Documents for, among other things, failure to make monthly loan payments in accordance with the terms and provisions of the Note and other Loan Documents. On November 4, 2023, Lender’s administrative agent sent notice of default to Borrower and Guarantor wherein Lender made demand upon Borrower and Guarantor to immediately pay and perform all obligations due and owing under the Loan Documents.

H. The unpaid principal, interest, Fees and expenses under the Note due and payable by Borrower as of _____, 2025 is [\$_____], broken down as follows:

Unpaid Accruals, Fees, and Expenses:	
Unpaid Principal Balance:	
Total as of October _____, 2025:	

This amount, together with additional sums for late charges, fees, costs, expenses, attorneys’ fees, and interest due and payable under the Loan Documents, which accrue after October [____], 2025 are collectively referred to as the “**Debt**”.

I. The Parties wish to compromise and settle their disputes in order to avoid the expense, burden and uncertainty of litigation and to resolve all claims and disputes now existing or hereafter arising between them relating to the Loan Documents and Property.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Holder, Borrower, and Guarantor hereby agree as follows:

1. ACCURACY OF RECITALS.

Borrower and Guarantor acknowledge the accuracy of the Recitals and that the Recitals contain true and accurate statements of facts and are hereby incorporated into this Agreement as express terms and conditions. Borrower and Guarantor further state the following:

1.1 The Loan Documents are valid and enforceable and are hereby reaffirmed in their entirety and incorporated into this Agreement by reference. Borrower and Guarantor have no claims, defenses, set-offs or counterclaims against Holder with respect to the Loan Documents or Debt.

1.2 The Loan has matured and is due and payable in full. The Loan is in default and the Debt as set forth in the Recitals is true and correct and due Holder as of this date.

2. REPRESENTATIONS AND WARRANTIES.

Borrower and Guarantor represent and warrant to Holder:

2.1 Borrower is the owner in fee simple of the Real Property and owner of the Collateral, and the Property is free and clear of liens, encumbrances, and rights or interests other than the Mortgage, other Property rights and interests of Holder granted and conveyed by the Loan Documents and the Permitted Encumbrances.

2.2 That other than Leases, Borrower has not entered into and at no time hereafter will they enter any agreement, whether oral or written, for the sale, lease or encumbrance of the Property; (ii) any and all Collateral claimed or owned by Borrower as of the date of this Agreement shall be conveyed and transferred to Holder by a bill of sale in for acceptable to Holder (the “**Bill of Sale**”); and (iii) neither Borrower nor Guarantor has received a purchase offer for the sale of the Property for an amount in excess of the Debt.

2.3 The Property does not contain any Hazardous Materials. Neither Borrower, Guarantor nor any of their respective affiliates (a) has conducted or authorized the generation, transportation, storage, treatment or disposal at the Property, of any Hazardous Materials in violation of applicable Environmental Laws, (b) is aware of any pending or threatened litigation or proceedings before any administrative agency in which any person or entity alleges the presence, release, threat of release, or placement on or in any portion of the Property any Hazardous Materials in violation of applicable Environmental Laws, and (c) has received any written notice that any Governmental Authority or any employee or agent thereof is investigating whether there is, or has determined that there has been (i) a presence, release, threat of release, or placement on, under or in the Property of any Hazardous Materials, or (ii) any generation, transportation, storage, treatment or disposal at the Property of any Hazardous Materials. There have been no communications or agreements among Borrower or any of its affiliates, on the one hand, and any Governmental Authority or agency (federal, state or local) or any private entity, on the other hand, including, without limitation, any prior owners of the Property, relating in any way to (x) the presence, release, threat of release, or placement on or in the Property of any Hazardous Materials, or (y) any generation, transportation, storage, treatment, or disposal at the Property of any Hazardous Materials. No claims have been made against the present owner, occupant or user of the Real Property and no claims have been made against any former owner, occupant or user of the Real Property, relating to the use or storage at, or the location at, in, on or under the Real Property of asbestos, any mold, or any Hazardous Material. Borrower is not aware of any wells on the Real Property.

2.4 Borrower has not received written notice of any claims, actions, suits or proceedings pending or contemplated, with respect to the Property, or Borrower's development, improvement, ownership, management, or operations thereof (including, without limitation, claims of tort, breach of contract, injunctions or stays, violation of law or eminent domain), or written notices of any default other than by Borrower or of the Property pursuant to any recorded covenants, conditions or restrictions affecting the Property.

2.5 Borrower and Guarantor warrant, represent, and agree to provide Holder with any information or documents requested by Holder. Borrower Group further warrants and represents

that neither Borrower nor Guarantor shall enter into an agreement, whether in writing or otherwise, relating to the Property, including, but not limited to, any deed, lease, encumbrance, lien, condominium document or filing, condominium association document filing, or easement, without the prior written consent of Holder.

2.6 The consideration given to Borrower and Guarantor by Holder for execution and delivery and performance of this Agreement and the Settlement Documents (as defined herein) consists of modification of the Loan so that it is non-recourse to the Guarantor and Borrower in all respects and the release of Guarantor and Borrower from liability under the Loan Documents as provided in this Agreement. The Note, as modified herein, and the Mortgage shall remain in full force and effect. The interest of Holder under the Transfer Documents in the property described in the Transfer Documents, on the one hand, and the interest of Holder in such property under the Mortgage, on the other hand, shall not be merged but shall remain separate and independent of each other. This is the intention of Borrower and Holder. The above non-recourse provision is not a release or discharge of the obligations of Borrower under the Settlement Documents, which obligations shall remain in full force and effect.

2.7 The total consideration described herein, and the execution and delivery of the Settlement Documents (as defined herein) is equal to and represents the fair value of the remedies available to Holder against Borrower. The amount of indebtedness of Borrower to Holder under the Loan Documents is accurately stated in Recital H.

2.8 This Agreement and the Settlement Documents are executed voluntarily and not as a result of duress, fraud, undue influence, or threats of any kind, and are bona fide and not given to hinder, delay, or defraud creditors or contravene the bankruptcy laws of the United States of America or any other applicable laws.

2.9 The Settlement Documents are not given as security for the payment of money or the performance of any other obligation. There is no agreement, arrangement, or understanding, oral or written, between Borrower and Holder, or any other person, for the reconveyance of the Property transferred by the Settlement Documents, or for the sale or transfer, or conveyance of the Property to any other person for the benefit of Borrower.

2.10 Borrower intends by this Agreement and the Settlement Documents to vest absolute and unconditional title to the Property in Holder or an entity related to or affiliated with Holder (the “**Related Entity**”) and forever to estop and bar Borrower and Guarantor and Borrower Group’s respective successors and assigns from having or claiming any right, title, or interest, either in law or in equity, or in possession or in expectancy, in or to such Property or any part thereof.

2.11 Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Borrower has the requisite limited liability company power and authority to carry out the terms and conditions of this Agreement and the Settlement Documents. Execution, delivery, and performance of this Agreement and the Settlement Documents by Borrower have been duly authorized by all requisite limited liability company action.

2.12 Guarantor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Guarantor has the requisite limited liability company power and authority to carry out the terms and conditions of this Agreement and the Settlement Documents. Execution, delivery, and performance of this Agreement and the Settlement Documents by Guarantor have been duly authorized by all requisite limited liability company action.

2.13 Nothing contained in this Agreement shall create any partnership, joint venture, management or other relationship between Holder and the Borrower Group other than that of Holder and borrower.

3. BORROWER'S OBLIGATIONS DURING THE TRANSITION PERIOD.

Upon execution of this Agreement and during the Transition Period (defined below), Borrower shall:

3.1 Execute and deliver the following documents in favor of Holder or the Related Entity ("**Transfer Documents**"), all in form and substance satisfactory to Holder or the Related Entity (this Agreement and the Transfer Documents are sometimes referred to herein individually and collectively as the "**Settlement Documents**");

- (a) Warranty Deed-in-Lieu of Foreclosure ("**Deed**");
- (b) Bill of Sale;
- (c) General Release;
- (d) Vendor's Affidavit;
- (f) Estoppel Affidavit;
- (g) Assignment of Leases, Service Contracts, Warranties, Licenses, Permits and Intangible Property;
- (h) Termination of existing management agreements, if any, on the Property;
- (i) Assignment of Insurance Premium Rebate, pursuant to which Borrower shall assign to Holder all rights of Borrower to any rebate, reimbursement or refund, if any, of any prepaid insurance premiums refundable upon cancellation of Borrower's insurance coverage related to the Property;
- (j) a certification of non-foreign status duly executed by Borrower;
- (k) such transfer declarations, disclosure statements, assignments, certificates and resolutions or other evidence of due authorization, execution and delivery and other documentation that may be required by law or as may be reasonably required by Holder or the title company; and

(l) Such other documents and information as Holder may request.

3.2 Maintain the Property in good condition, free of defects, waste, deterioration, and encumbrances.

3.3 Not prepare, draft, participate in, execute, file or record any document relating to the Property, including, but not limited to, any deed, lease, encumbrance, lien or easement, without the prior written consent of Holder.

3.4 Cooperate with and assist Holder, as reasonably requested by Holder, to effectuate Holder obtaining free and clear marketable title to the Property by whatever method is selected by Holder including, but not limited to, the following matters:

(a) As requested, assist Holder in obtaining an updated title report and related documents and to obtain lien releases, if any needed, from Borrower and/or any other third party to ensure unencumbered title to Holder; and

(b) Cooperate with and assist Holder upon Holder's request to effectuate obtaining updated title work; and

(c) Cooperate with Holder to ensure that any and all documents on file with any Governmental Authority are in full and complete compliance with any and all laws, regulations, and Loan Documents. To the extent requested by Holder, Borrower will execute any and all documents, if any, to confirm that any and all documents on file with any Governmental Authority are in full and complete compliance with any and all laws, regulations, and the Loan Documents.

4. TRANSITION PERIOD AND CLOSING.

4.1 This Agreement shall close (the "**Closing**") upon Holder's receipt of the Settlement Documents executed by Borrower, Borrower's surrender of the Property to Holder, and the recording of the Deed.

4.2 Between the date of the execution of this Agreement and the Closing there shall be a transition period during which Lender shall conduct such inquiry into the condition of title of the Property and the condition of the Property (the "**Transition Period**") as it deems reasonable and necessary. During the Transition Period, Lender shall determine the manner and method by which Lender shall cause Lender or its assignee to take title to the Property. Holder, in its sole and absolute discretion may, during the Transition Period, elect to terminate Holder's obligations under this Agreement and refuse to close. Should Holder elect not to close, it shall give Borrower five days' written notice.

4.3 Holder shall not be obligated to close upon:

(a) Holder concluding it is unable to obtain free and clear title to the Property,
or

(b) The breach or nonperformance by Borrower of any covenant, term, condition, representation or warranty set forth in this Agreement or a Settlement Document, or

(c) any transfer of the Property or any portion thereof, by sale or lease, or otherwise, or execution of any other agreement, assignment or restriction affecting the Property, without the prior written consent of Holder, or

(d) any attempt by any creditor of Borrower to attach the Property or any portion thereof or the commencement of any foreclosure action or other legal proceeding affecting the Property or any portion thereof, or

(e) the commencement of any litigation or other action or proceedings by Borrower against Holder, or

(f) except as expressly modified in this Agreement, any breach of a covenant, term, condition, representation, or warranty set forth in the Loan Documents, other than the defaults described in Recital G.

4.4 No monies, cash or amounts of any kind shall be received by the Borrower Group or their respective affiliates at the Closing (or credited toward any amounts due from the Borrower Group or their respective affiliates).

4.5 To the extent available, Borrower shall deliver, or cause to be delivered, to Holder or cause to remain at the Real Property, the following on or before the Closing to the extent in Borrower's possession and/or control:

(a) all management agreements, service contracts, equipment leases and similar third-party contracts affecting the Property;

(b) copies of licenses and permits;

(c) copies of unexpired claims, warranties, and guarantees, if any, received in connection with the Property and the improvements thereon, if and to the extent assignable;

(d) copies of all plans, technical drawings, studies, data and specifications, and the records and data relating thereto (in whatever form) relating to the Property and the development, rehabilitation or improvement thereof, if any;

(e) copies of all insurance policies in place as of the Closing; and

(f) copies of all material files, correspondence, documents, agreements, instruments, written materials and written information pertaining to the operation, maintenance and use of the Real Property.

4.6 Borrower shall deliver to Holder, the following on or before the Closing:

(a) all keys for the Property, including the keys for any machinery, equipment or other personal property and any individual space and any office, storage or other facilities used in connection with the Property, which keys shall be properly tagged for identification, together with all passcodes, passcards and combinations for combination locks at the Property;

(b) any entry cards or opening devices for any security gates or garages in the Property; and

(c) full and complete possession and control of all of the Property, subject to the rights of tenants.

4.7 Borrower and Guarantor acknowledge that Holder may be obligated to send to Borrower and the Internal Revenue Service certain tax reporting forms, for the year in which the Borrower Group's debt and other related obligations under the Loan Documents are cancelled. Such form is required to be included in the Borrower Group's income tax return for the applicable year.

4.8 Borrower agrees that Holder is not a mortgagee-in-possession and that this Agreement does not create any obligation on the part of Holder to manage or operate the Property or give Holder any control over the Property until after the Closing.

5. SPECIAL PROVISIONS FOR LITIGATION-PROOF AND BANKRUPTCY-PROOF ENFORCEMENT OF HOLDER'S RIGHTS.

5.1 The Borrower Group and their respective attorneys have engaged in thorough and extensive settlement negotiations with Holder and its attorneys immediately preceding and resulting in the execution of this Agreement. All of those settlement negotiations have been completed, and are merged into this Agreement, which states as a full, complete, express, written, and unambiguous integration the precise agreement of the Borrower Group and Holder. Pursuant to those settlement negotiations now merged into this Agreement, Holder and its attorneys have been absolutely clear and explicit in explaining to the Borrower Group, and their respective attorneys, the basis upon which Holder is willing to make this Agreement. Specifically, Holder is a party to this Agreement based on assurances by the Borrower Group that, if they fail to perform in accordance with this Agreement, Holder will have the absolute right to enforce its legal, equitable, and contractual rights under this Agreement, under the Loan Documents, and otherwise, and there will be no effort or capability, whether pursuant to the bankruptcy laws of the United States or otherwise, of altering or modifying those legal, equitable, and contractual rights or enjoining or delaying in any way Holder's enforcement of those rights. In particular, Holder is entering into this Agreement upon the assurance by the Borrower Group that a complete relinquishment, return, and transfer of the Property to Holder cannot and will not be delayed, avoided, modified or extended by any device whatsoever. Without those explicit assurances from the Borrower Group, Holder would refuse to make this Agreement; it would not grant any of the financial accommodations provided in this Agreement; and it would proceed immediately and vigorously to enforce its rights in foreclosure proceedings, in any action involving a receiver for the Property, and in whatever other litigation proceedings it may choose to prosecute. Because of the importance to Holder and to this Agreement of the foregoing assurances (referred to by the

parties as “litigation-proof and bankruptcy-proof” enforcement rights), the Borrower Group has worked with Holder in making the foregoing assurances legally binding and specifically enforceable.

5.2 This Agreement will govern and control all dealings between and among Holder and the Borrower Group with respect to every matter that is the subject of this Agreement, including, but not limited to, the indebtedness owing under the Loan Documents, Holder’s rights in the Property, and the validity, perfection, priority, enforceability, and treatment of Holder’s legal, equitable, and contractual rights as a creditor of the Borrower Group.

5.3 The Borrower Group confirms and acknowledges that the fair value of their respective assets exceed the total amount of their respective liabilities. As a result, the Borrower Group confirms that each of them is not insolvent within the meaning of 11 U.S.C. § 101(32). In addition, the Borrower Group confirms that they are not involved in any pending or threatened bankruptcy proceeding. None of the individuals or entities that comprise the Borrower Group intend to file a bankruptcy proceeding in the foreseeable future, and such individuals and entities covenant that they will not file a bankruptcy proceeding within 100 days after the closing of the transfer of the Property to Holder. The individuals and entities that comprise the Borrower Group expressly represent that there are no attachments, executions, assignments for the benefit of creditors, receiverships, or conservatorships which have been filed by, or are pending against, any of them or affecting the Property.

5.4 The Borrower Group acknowledges and confirms that there is no equity in the Property over and above the liens held by Holder on the Property, and by executing this Agreement, the Borrower Group represents to Holder that the fair market value of the Property as of the date of the Closing does not exceed the Debt. In addition, the Borrower Group acknowledges and confirms that, within the meaning of 11 U.S.C. § 362(d)(2), the Property is not necessary to an effective reorganization of any individual or entity that comprises the Borrower Group in any bankruptcy proceeding which may be commenced by or against any of them. In all events, and in any bankruptcy proceeding brought by or against any individual or entity that comprises the Borrower Group, Holder shall be granted immediate and complete relief from all bankruptcy stays and injunctions, including the automatic stay of 11 U.S.C. § 362(a), so that Holder can exercise all of its rights and remedies with respect to the Property in accordance with the Loan Documents.

5.5 This Agreement is executed voluntarily and not pursuant to any duress. The transfers and conveyances made to Holder pursuant to this Agreement are not intended to hinder, defraud, or delay any creditors of the Borrower Group. The transfers and conveyances made to Holder are for fair considerations and are for reasonably equivalent and contemporaneous value. The transfers and conveyances made to Holder pursuant to this Agreement will not render any individual or entity that comprises the Borrower Group insolvent or undercapitalized. The transfers and conveyances made to Holder pursuant to this Agreement will not enable Holder to receive more than it would receive in a bankruptcy under 11 U.S. Code Chapter 7 of any individual or entity that comprises the Borrower Group had the transfers or conveyances not been made. The Borrower Group confirms and acknowledges that the transfers and conveyances made to Holder pursuant to this Agreement cannot be avoided under any applicable state or federal fraudulent conveyance statutes, including 11 U.S.C. § 548. Likewise, the Borrower Group confirms and

agrees that the transfers and conveyances to Holder do not constitute preferential transfers within the meaning of any applicable state or federal statute, including 11 U.S.C. § 547.

5.6 The Borrower Group and Holder know and understand that there are rights and remedies provided under state and federal laws, pursuant to which parties otherwise bound by an agreement can attempt to obtain relief from such an agreement by alleging circumstances that may warrant a change or modification in the agreement, or circumstances such as fraud, mistake, inadvertence, excusable neglect, newly discovered evidence, or similar matters that may justify rescinding the agreement entirely, or otherwise changing or modifying it (collectively “**Changed Circumstances**”). Rights and remedies based on Changed Circumstances include, but are not limited to, modification of an agreement pursuant to a plan of reorganization in a bankruptcy case under 11 U.S. Code Chapter 11. With full knowledge and understanding of what are, or may be, their present or future rights and remedies based on allegations of Changed Circumstances, each individual and entity that comprises the Borrower Group: (i) expressly disavows that there are any matters which constitute any kind of Changed Circumstances as of the date of Closing; (ii) expressly disavows that they are aware of any matters whatsoever that they are assuming, contemplating, or expecting in executing this Agreement that would serve as a basis to allege such Changed Circumstances; and (iii) in all events, expressly waives any and all rights and remedies that they have, or may have, now or in the future, based on any Changed Circumstances, and they voluntarily assume the risk of any Changed Circumstances. Without limiting any of the foregoing, each individual and entity that comprises Borrower represents that they are engaged in the business of real estate development, ownership, and operation, and acknowledge that their business enterprises are, and will be, affected by volatile and unpredictable local and national market forces and trends. Each individual and entity that comprises the Borrower Group understands and agrees that Holder is not willing to bear any of the risks involved in their business enterprises and Holder is not willing to modify any of its rights if such risks cause actual or alleged Changed Circumstances; and each individual and entity that comprises the Borrower Group expressly assumes all risks of any and all such matters. Irrespective of any Changed Circumstances, each individual and entity that comprises the Borrower Group will not attempt to modify or otherwise alter Holder’s rights under this Agreement through the filing or prosecution of a bankruptcy proceeding. Without limiting the foregoing, each individual and entity that comprises the Borrower Group agrees that he or she will not file any plan of reorganization which attempts to alter or modify the rights and remedies obtained by Holder under this Agreement.

6. RELEASE OF HOLDER.

6.1 Subject to Section 8 below, automatically upon Closing and without any further act or action required of any party, Borrower and Guarantor together with their respective successors and assigns, fully, finally, and forever release and discharge Holder and its successors and assigns, directors, officers, employees, agents, and representatives, from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits whatsoever in law or in equity that Borrower and Guarantor, individually or collectively, has or in the future may have, whether known or unknown, in respect of the Loan evidenced by the Note, the Loan Documents, the Property, or the actions or omissions of Holder in respect of the Loan, the Loan Documents, or the Property. It is further agreed that nothing set forth in or contemplated by this Agreement will be construed, interpreted, or referred to as an admission of liability by Holder and that the Settlement Documents are made to settle and release any claims that Borrower and Guarantor may have or

could have asserted against Holder in respect of the Loan evidenced by the Note, the Loan Documents, the Property, or the actions or omissions of Holder in respect thereof.

6.2 Borrower and Guarantor each expressly waives, if and to the extent applicable, any and all rights conferred upon it by the provisions of California Civil Code Section 1542, and expressly consents that this release shall be given full force and effect according to each and all of its express terms and provisions. Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Initials of Borrower: _____

Initials of Guarantor: _____

The Borrower Group understands and acknowledges the significance and consequences of such release and specific waiver of Section 1542 and has been advised by independent legal counsel concerning the same.

7. RELEASE OF BORROWER AND GUARANTOR.

7.1 Subject to Section 8 herein, automatically upon Closing and without any further act or action required of any party, Holder together with its successors and assigns, fully, finally, and forever releases and discharges Borrower and Guarantor and their respective successors and assigns, directors, officers, employees, agents, and representatives, from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits whatsoever in law or in equity that Holder has or in the future may have, whether known or unknown, in respect of the Loan evidenced by the Note, the Loan Documents, the Property, or the actions or omissions of Borrower and Guarantor in respect of the Loan, the Loan Documents, or the Property.

7.2 Notwithstanding the foregoing, Borrower and Guarantor, jointly and severally, agree to indemnify and hold Holder and the Related Entity harmless and upon demand by Holder or the Related Entity defend Holder and any Related Entity who takes title to the Property from and against any and all damages, losses, liabilities, and expenses (including, without limitation, costs and expenses of litigation, and reasonable attorneys' fees) incurred by Holder or any Related Entity who obtains title to the Property in respect of any breach of any representation, warranty, or covenant of Borrower or Guarantor in the Settlement Documents.

7.3 Notwithstanding anything contained herein to the contrary, Holder expressly reserves the right to (1) foreclose the Mortgage; (2) name and/or include any one or more of the Borrower and/or Guarantor in a suit seeking termination of one or more interests in the Property and/or resolution of any other title claims or issues, so long as monetary relief is not sought as against Borrower and/or Guarantor; (3) name and/or include Borrower and/or Guarantor in any action brought against Holder by third parties relating to or arising out of, in whole or in part, action or inaction by one or more of the Borrower Group relating to the Property; or (4) sue any

one or more of Borrower and/or Guarantor for breach of any term, agreement, or warranty set forth in this Agreement or in the Settlement Documents.

8. FAILURE TO CLOSE AND CONSEQUENCES.

Should Holder elect not to close as set forth in Section 4.3 herein, the parties to this Agreement shall be returned to the rights, privileges and responsibilities held by them immediately prior to the execution of this Agreement. Specifically, Holder shall immediately be permitted to exercise any and all of its available legal and equitable remedies as set forth in the Loan Documents and to exercise any other rights, remedies, causes of action and privileges available at law or in equity against Borrower and Guarantor including, but not limited to, the commencement and/or continuance of a foreclosure proceeding with respect to the Property and/or the commencement of other collection proceedings against Borrower and/or Guarantor. Except as modified by this Agreement, the parties agree that the terms, conditions, and provisions of the Loan Documents remain in full force and effect upon and after execution of this Agreement, and Borrower and Guarantor are and remain obligated under the Loan Documents and agree to comply and perform in accordance with the terms of the Loan Documents, as modified by this Agreement, unless and until the Closing occurs. The parties further agree that, should Holder elect not to close, for any reason, Borrower and Guarantor are released from the Recitals and nothing in this Agreement shall be deemed an admission by Borrower or Guarantor, and this Agreement shall not be admissible in any subsequent proceeding of any kind as proof of the accuracy of the Recitals.

9. BANKRUPTCY / TURNOVER.

Holder is a party to this Agreement and the Settlement Documents based on its understanding and assurances by Borrower that, if Holder is required to return, forfeit, turnover, or disgorge any portion of the Property, whether to Borrower, Borrower's bankruptcy estate, any creditor of Borrower, or otherwise, Holder will have the absolute right to enforce its legal, equitable, and contractual rights under the Loan Documents, and otherwise, and there will be no effort or capability, whether pursuant to the bankruptcy laws of the United States or otherwise, of altering or modifying those legal, equitable, and contractual rights or enjoining or delaying in any way Holder's enforcement of those rights. In connection therewith, in the event that Holder is required to return, forfeit, turnover, or disgorge any portion of the Property, whether to Borrower, or to return any portion of the Property to Borrower's bankruptcy estate, or any creditor of Borrower, or otherwise, Holder shall have the right to terminate the Settlement Documents, including, without limitation, the releases set forth in Section 7 herein, and Holder, Borrower, and Guarantor shall revert to the rights, liabilities and positions under the Loan Documents as if this Agreement and the Settlement Documents had not been entered into between the parties hereto, and Holder, Borrower, and Guarantor shall have the right to pursue any and all remedies they may have against each other under the Loan Documents, at law or in equity, including, in the case of Holder, the recovery of the full indebtedness outstanding under the Loan Documents, without being limited or precluded from doing so by the this Agreement or the Settlement Documents.

10. UNCONDITIONAL AND ABSOLUTE TRANSFER

The grant, assignment, conveyance and transfer of the Property shall be unconditional and absolute upon the Closing, and Borrower shall not have (and does not reserve) any right, title or interest of

any kind whatsoever in or to any part of the Property. Borrower hereby forever waives and releases any and all rights of redemption and other rights, if any, which it might have or have had in connection with the Property, whether arising from the grant, assignment, conveyance and transfer of the Property described herein, or arising from any foreclosure sale which Holder might have elected to hold or may hereinafter hold pursuant to the Mortgage. Holder does not and will not assume, directly or indirectly, any liability, obligation, duty or responsibility whatsoever for the payment, discharge or other resolution of any liability, obligation, indebtedness, lien, security interest, encumbrance, claim or other problem, condition or matter which has been or may hereafter be created or assumed by Borrower, anyone associated with Borrower or any of Borrower's predecessors in interest or which may otherwise presently exist with respect to any of the Property. The Borrower Group acknowledges and agrees that Holder's or the Related Entity's acceptance of title to the Property pursuant to the terms of this Agreement will not create any liability on Holder's or the Related Entity's part to third parties that have claims of any kind against the Borrower Group in connection with the Property or otherwise. Holder may at any time sell, transfer, encumber (including by additional advances of the Loan, or separate encumbrances) lease, assign or abandon the Property and may take or omit to take any action which Holder in its discretion may deem to be in its best interest with regard to Borrower or any other person, and Borrower shall have no right, title or interest in or to any portion of any consideration received by Holder in connection with any such sale, transfer, encumbrance, lease, assignment or abandonment of the Property.

11. NON-MERGER

Borrower expressly acknowledges and agrees that delivery of the Deed to Holder or the Related Entity shall not operate to merge the Mortgage interest with the fee interest in the Real Property. It is the purpose and intent of Borrower, Guarantor and Holder that the beneficial interest of Holder in the Property under the Mortgage shall not merge into the fee interest conveyed pursuant to the Deed, and such interests shall be and remain at all times separate and distinct. The conveyance contemplated herein and effected pursuant to the Deed shall not affect the other Loan Documents or the obligations secured by the Mortgage.

12. ENTIRE AGREEMENT, CHANGE, DISCHARGE, TERMINATION, AND WAIVER.

This Agreement and the Settlement Documents contain the entire agreement between the parties thereto with respect to the matters referred to therein and, except as provided therein, supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations. No provision of this Agreement and the Settlement Documents may be changed, discharged, terminated, or waived except in a writing signed by Holder and the Borrower Group. Delay in exercise or failure to exercise any right or remedy by Holder shall not constitute a waiver thereof or of the right to exercise the same right or remedy upon the occurrence of any subsequent event.

13. SEVERABILITY.

If any provision of this Agreement or the Settlement Documents is unenforceable, the enforceability of the other provisions shall not be affected, and they shall remain in full force and effect.

14. NUMBER AND GENDER.

In this Agreement and the Settlement Documents, the singular shall include the plural and the masculine shall include the feminine and neuter genders and vice versa.

15. ASSIGNMENT

Holder reserves the right to assign this Agreement and the Settlement Documents to another entity or party. In the event of any such assignment, all of Holder's rights benefits, or obligations under the assigned instrument shall inure to the benefit of the assignee as if the assignee were a party to such instrument.

16. FURTHER ASSURANCES

Upon request, Borrower and Guarantor will execute all other documents and instruments necessary to effectuate the intent and carry out the purpose of this Agreement.

17. HEADINGS.

The headings at the beginning of each section of this Agreement and the Settlement Documents are solely for convenience and are not part of this Agreement.

18. CHOICE OF LAW.

This Agreement and the Settlement Documents shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to conflicts of law principles. In any action arising out of or connected with this Agreement or the Settlement Documents, Borrower and Guarantor each hereby expressly consents to the personal jurisdiction of any state or federal court located in the County of _____, State of _____, and also consents to service of process by any means authorized by federal or governing state law.

19. BENEFIT OF SETTLEMENT AGREEMENT.

The Settlement Documents are made for the benefit of Holder and the Borrower Group and their respective successors and assigns only. No other person shall have any rights hereunder or by reason hereof. The Settlement Documents shall be binding upon and inure to the benefit of Holder and the Borrower Group and their respective successors and assigns.

20. TIME OF ESSENCE.

Time is of the essence with regard to each provision of this Agreement and the Settlement Documents as to which time is a factor.

21. NO CONSTRUCTION FOR OR AGAINST HOLDER OR BORROWER.

This Agreement and the Settlement Documents are the result of negotiations between Holder and the Borrower Group. Accordingly, this Agreement and the Settlement Documents shall not be

construed for or against Holder or the Borrower Group, regardless of which party drafted the documents or any part thereof.

22. COUNTERPART EXECUTION.

This Agreement and the Settlement Documents may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

23. COSTS AND EXPENSES.

The prevailing party in any action brought to enforce this Agreement and the Settlement Documents will be entitled to recover from the breaching party, in addition to any other relief provided by the law, such costs and expenses as may be incurred by the prevailing party, including court costs and reasonable attorneys' fees and disbursements and other costs and expenses. All other costs and expenses in connection with the Settlement Documents, including, without limitation, transfer taxes (if any), recording costs, title insurance costs, and any other costs and expenses in connection with this Agreement and the Settlement Documents, shall be borne and paid by Borrower and Guarantor.

24. SURVIVAL

Borrower's and Guarantor's representations, warranties, covenants and obligations and waivers hereunder shall survive the Closing.

25. NO NOVATION OR RELEASE

Except as may be expressly provided in this Agreement, neither this Agreement nor any of the exhibits attached to this Agreement is intended to be, and none shall be deemed or construed to be, a reinstatement, novation, amendment, modification or release of the Loan or any of them. Neither this Agreement nor any of the exhibits to this Agreement nor any payments made or any actions taken pursuant to this Agreement shall be deemed to cure any existing default under the Loan Documents, it being the intention of the parties that the Loan is and shall remain in default and immediately due and payable in full notwithstanding this Agreement, the Closing or other transactions contemplated by this Agreement.

26. WAIVER OF JURY TRIAL

AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE, AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. IN ADDITION, EACH PARTY WAIVES THE RIGHT TO CLAIM OR RECOVER IN ANY SUCH SUIT, ACTION OR PROCEEDING ANY DAMAGES OTHER THAN OR IN ADDITION TO ACTUAL DAMAGES. NONE OF THE PARTIES SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY PARTY EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH AFFECTED PARTY.

[SIGNATURE PAGES FOLLOW]

DATED as of the date first above stated.

HOLDER:

_____, a [Delaware limited liability company]

By: _____

Name:

Title:

BORROWER:

G&I IX MJW LAKE POINTE III & IV LLC, a
Delaware limited liability company

By: G&I IX MJW Lake Pointe JV LLC,
a Delaware limited liability company, its sole
member

By: G&I IX Investment Lake Pointe LLC,
a Delaware limited liability company, its managing
member

By: _____

Printed Name: _____

Title: _____

GUARANTOR:

**DRA GROWTH AND INCOME MASTER FUND IX,
LLC**, a Delaware limited liability company

By: Manageco IX, LLC, a Delaware limited liability
company, its managing member

By: _____

Printed Name: _____

Title: _____

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