

**CREDIT AGREEMENT**

**between**

**GENTRY MILLS CAPITAL, L.L.C.**

**and**

**LSM INITIATIVES, LLC**

**DATED AS OF MAY 22, 2018**

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A	Compliance Certificate	1.1

## CREDIT AGREEMENT

THIS CREDIT AGREEMENT (the “*Agreement*”), dated as of May 22, 2018, is between GENTRY MILLS CAPITAL, L.L.C., a Texas limited liability company (“*Borrower*”), and LSM INITIATIVES, LLC (“*Lender*”).

### RECITALS

Borrower has requested that Lender extend credit to Borrower as described in this Agreement. Lender is willing to make such credit available to Borrower upon and subject to the provisions, terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

### SECTION 1

#### DEFINITIONS

##### Section 1.1 Definitions.

As used in this Agreement, all exhibits, appendices and schedules hereto and in any note, certificate, report or other Loan Documents made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in this *Section 1* or in the provision, section or recital referred to below:

“*Advance*” means an advance by Lender to Borrower pursuant to *Section 2*.

“*Affiliate*” means, as to any Person, any other Person (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; (b) that directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting stock of such Person; or (c) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by such Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“*Agreement*” has the meaning set forth in the introductory paragraph hereto, and includes all schedules, exhibits and appendices attached or otherwise identified therewith.

“*Borrower*” means the Person identified as such in the introductory paragraph hereto, and its successors and assigns to the extent permitted by *Section 11.8*.

“*Business Day*” has the meaning assigned to it in the Note.

“*CF Note*” means the promissory note dated May 22, 2018 in the amount of \$5,000,000.00 by Borrower as maker and payable to CrossFirst Bank (“*CFB*”).

“*Code*” means the Internal Revenue Code of 1986.

“*Collateral*” has the meaning set forth in *Section 4.1*.

“*Commitment*” means the obligation of Lender to make an Advance pursuant to *Section 2.1(a)* in the principal amount of \$5,000,000.00.

“*Commitment Fee*” means \$100,000.00 with respect to the Commitment.

“*Compliance Certificate*” means a certificate, substantially in the form of *Exhibit A*, prepared by and certified by a Responsible Officer.

“*Constituent Documents*” means (a) in the case of a corporation, its articles or certificate of incorporation and bylaws; (b) in the case of a general partnership, its partnership agreement; (c) in the case of a limited partnership, its certificate of limited partnership and partnership agreement; (d) in the case of a trust, its trust agreement; (e) in the case of a joint venture, its joint venture agreement; (f) in the case of a limited liability company, its certificate of formation, operating agreement, regulations and/or other organizational and governance documents and agreements; and (g) in the case of any other entity, its organizational and governance documents and agreements.

“*Default*” means an Event of Default or the occurrence of an event or condition which with notice or lapse of time or both would become an Event of Default.

“*Default Interest Rate*” has the meaning assigned to it in the Note.

“*Dollars*” and “*\$*” mean lawful money of the United States of America.

“*Event of Default*” has the meaning set forth in *Section 10.1*.

“*GAAP*” means generally accepted accounting principles, applied on a consistent basis, as set forth in opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a “consistent basis” when the accounting principles applied in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

“*Governmental Authority*” means any nation or government, any state or political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

“*Guarantors*” means each Person who from time to time guarantees all or any part of the Obligations, and “*Guarantor*” means any one of the Guarantors.

“*Guaranty*” means a written guaranty of the Guarantors in favor of Lender, in form and substance satisfactory to Lender.

“*IRS*” means the Internal Revenue Service or any entity succeeding to all or any of its functions.

“**Lender**” means the Person identified as such in the introductory paragraph hereto, and includes its successors and assigns.

“**Lien**” means any lien, mortgage, security interest, tax lien, pledge, charge, hypothecation, assignment, preference, priority, or other encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or title retention agreement), whether arising by contract, operation of law, or otherwise.

“**Loan**” means the loan evidenced by the Note.

“**Loan Documents**” means this Agreement, the Security Documents, the Note, the Guaranty, and all other pledge agreements, instruments, documents, or agreements executed and delivered pursuant to or in connection with this Agreement or the Security Documents.

“**Material Adverse Event**” means any act, event, condition, or circumstance which could materially and adversely affect: (a) the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower; (b) the ability of any Obligated Party to perform its obligations under any Loan Document to which it is a party; or (c) the legality, validity, binding effect or enforceability against any Obligated Party of any Loan Document to which it is a party.

“**Maximum Rate**” means, at all times, the maximum rate of interest which may be charged, contracted for, taken, received or reserved by Lender in accordance with applicable Texas law (or applicable United States federal law to the extent that such law permits Lender to charge, contract for, receive or reserve a greater amount of interest than under Texas law). The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges in respect of the Loan Documents that constitute interest under applicable law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate.

“**Net Worth**” means, for any Person as of any date, the value of total assets (including leaseholds and leasehold improvements and reserves against assets) less Total Liabilities, including but not limited to accrued and deferred income taxes, but excluding the non-current portion of Subordinated Liabilities.

“**Note**” means the Promissory Note executed by Borrower payable to the order of Lender of even date herewith in the original principal amount of \$5,000,000.00.

“**Obligated Party**” means Borrower, each Guarantor or any other Person who is or becomes party to any agreement that obligates such Person to pay or perform, or that guarantees or secures payment or performance of, the Obligations or any part thereof.

“**Obligations**” means all obligations, indebtedness, and liabilities of Borrower, each Guarantor and any other Obligated Party to Lender or any Affiliate of Lender, or both, under this Agreement, the other Loan Documents, and all interest accruing thereon (whether a claim for post-filing or post-petition interest is allowed in any bankruptcy, insolvency, reorganization or

similar proceeding) and all attorneys' fees and other expenses incurred in the enforcement or collection thereof.

“**OFAC**” means the Office of Foreign Assets Control.

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56, signed into law October 26, 2001).

“**Permitted Lien**” means any Lien that secures payment of the CF Note.

“**Person**” means any individual, corporation, limited liability company, business trust, association, company, partnership, joint venture, Governmental Authority, or other entity, and shall include such Person's heirs, administrators, personal representatives, executors, successors and assigns.

“**Property**” of a Person means any and all property, whether real, personal, tangible, intangible or mixed, of such Person, or any other assets owned, operated or leased by such Person.

“**Related Indebtedness**” has the meaning set forth in **Section 11.20**.

“**Responsible Officer**” means the chief executive officer, president, chief financial officer, or treasurer of Borrower or any Person designated by a Responsible Officer to act on behalf of a Responsible Officer; *provided that* such designated Person may not designate any other Person to be a Responsible Officer. Any document delivered hereunder that is signed by a Responsible Officer of Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of Borrower.

“**RICO**” means the Racketeer Influenced and Corrupt Organization Act of 1970.

“**Secured Parties**” means the collective reference to Lender and any other Person the Obligations owing to which are, or are purported to be, secured by the Collateral under the terms of the Security Documents.

“**Security Documents**” means each and every security agreement, pledge agreement, mortgage, deed of trust, subordination agreements relating to the CF Note, or other collateral security agreement required by or delivered to Lender from time to time that purport to create a Lien in favor of any of the Secured Parties to secure payment or performance of the Obligations or any portion thereof.

“**Subordinated Liabilities**” means liabilities subordinated to a Person's obligations to Lender in a manner acceptable to Lender in its sole discretion.

“**Subordination Letter**” means the letter agreement executed by CFB and Lender, and agreed to by Borrower, of even date herewith, subordinating the Loan to the loan evidenced by the CF Note.

“*Total Liabilities*” means the sum of current liabilities plus long-term liabilities.

### **Section 1.2 Accounting Matters.**

Any accounting term used in this Agreement or any other Loan Document shall have, unless otherwise specifically provided therein, the meaning customarily given such term in accordance with GAAP, and all financial computations thereunder shall be computed, unless otherwise specifically provided therein, with respect to Borrower in accordance with GAAP consistently applied; *provided, however*, that all financial covenants and calculations in the Loan Documents shall be made in accordance with GAAP as in effect on the date of this Agreement unless Borrower and Lender shall otherwise specifically agree in writing. That certain items or computations are explicitly modified by the phrase “in accordance with GAAP” shall in no way be construed to limit the foregoing

### **Section 1.3 Intentionally Deleted.**

### **Section 1.4 Other Definitional Provisions.**

All definitions contained in this Agreement are equally applicable to the singular and plural forms of the terms defined. The words “hereof”, “herein”, and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear. Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

## **SECTION 2**

### **ADVANCES**

#### **Section 2.1 Advances.**

Subject to the terms and conditions of this Agreement, Lender agrees to make, on or about the date of this Agreement a single Advance to Borrower in the principal amount of \$5,000,000.00.

(a) **The Note.** The obligation of Borrower to repay the Loan and interest thereon shall be evidenced by the Note executed by Borrower, and payable to the order of Lender in the principal amount of \$5,000,000.00.

**(b) Repayment of Principal.** Subject to prior acceleration or any prepayment obligation as provided in this Agreement, the unpaid principal balance of the Note shall be repaid as provided therein.

**(c) Interest.** The unpaid principal amount of the Loan shall, subject to the following sentence, bear interest as provided in the Note. If at any time the rate of interest specified in the Note shall exceed the Maximum Rate but for the provisions thereof limiting interest to the Maximum Rate, then any subsequent reduction shall not reduce the rate of interest on the Note below the Maximum Rate until the aggregate amount of interest accrued on the Note equals the aggregate amount of interest which would have accrued on the Note if the interest rate had not been limited by the Maximum Rate. Accrued and unpaid interest on the Note shall be payable as provided in the Note and on the Maturity Date.

## **Section 2.2 General Provisions Regarding Interest; Etc.**

**(a) Default Interest Rate.** Any outstanding principal of the Advance and (to the fullest extent permitted by law) any other amount payable by Borrower under this Agreement or any other Loan Document that is not paid in full when due (whether at stated maturity, by acceleration, or otherwise) shall bear interest at the Default Interest Rate for the period from and including the due date thereof to but excluding the date the same is paid in full. Additionally, at any time that an Event of Default exists, all outstanding and unpaid principal amounts of all of the Obligations shall, to the extent permitted by law, bear interest at the Default Interest Rate. Interest payable at the Default Interest Rate shall be payable from time to time on demand.

**(b) Computation of Interest.** Interest on the Advance and all other amounts payable by Borrower hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a usurious rate, in which case interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be.

## **Section 2.3 Intentionally Deleted.**

## **Section 2.4 Use of Proceeds.**

The proceeds of the Loan will be used by Borrower for a portion of an equity contribution in a transaction involving the acquisition and renovation of a 165-unit Hampton Inn & Suites located at 100 Passaic Avenue, Harrison, New Jersey 07029 (“*Project*”).

## SECTION 3

### PAYMENTS

#### Section 3.1 Method of Payment.

All payments of principal, interest, and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Lender in immediately available funds, without setoff, deduction, or counterclaim, and free and clear of all taxes at the time and in the manner provided in the Note.

#### Section 3.2 Prepayments.

- (a) **Voluntary Prepayments.** Borrower may prepay all or any portion of the Note to the extent and in the manner provided for therein.
- (b) **Mandatory Payments of Advance.** Following the payment in full of the CF Note, then concurrently with each subsequent disposition permitted by *Section 8.3(b)*, Borrower shall be required to use all net proceeds of such disposition to pay a portion of the outstanding principal of the Loan.

#### Section 3.3 Loan Fees.

Borrower shall pay to Lender the following

- (a) The Commitment Fee, payable at Closing;
- (b) An origination fee equal to the excess of (i) 10% annum interest on the amount of the CF Note principal balance, calculated as set forth in the CF Note, over (ii) the actual interest charged on the CF Note, calculated and payable monthly; and
- (c) A 2.5% share of the net cash flow of Excel Holdings 11 LLC, a Delaware limited liability company ("Excel LLC"), after GMI-Harrison 165, LP, a Texas limited partnership, has received a 10% compounded annual return on an amount equal to its aggregate equity contributions to Excel LLC, followed by the return of such capital contributions, as stated in Section 3 of the Bridge Loan Agreement of even date herewith among Excel LLC and its members.

## SECTION 4

### SECURITY

#### Section 4.1 Collateral.

To secure full and complete payment and performance of the Obligations, Borrower shall, and shall cause the other Obligated Parties to, execute and deliver or cause to be executed and delivered all of the Security Documents required by Lender covering the Property of Borrower and the other Obligated Parties as described in such Security Documents (which, together with any other Property and collateral described in the Security Documents, and any

other Property which may now or hereafter secure the Obligations or any part thereof, is sometimes herein called the “*Collateral*”). Borrower shall execute and cause to be executed such further documents and instruments, including without limitation, UCC financing statements, as Lender, in its sole discretion, deems necessary or desirable to create, evidence, preserve, and perfect liens and security interests in the Collateral.

#### **Section 4.2 Setoff.**

If an Event of Default exists, Lender shall have the right to set off and apply against the Obligations in such manner as Lender may determine, at any time and without notice to Borrower, any and all deposits (general or special, time or demand, provisional or final) or other sums at any time credited by or owing from Lender to Borrower (to the extent available) whether or not the Obligations are then due. The rights and remedies of Lender hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Lender may have.

### **SECTION 5**

#### **CONDITIONS PRECEDENT**

##### **Section 5.1 Extension of Credit.**

The obligation of Lender to make the Advance under the Note is subject to the condition precedent that Lender shall have received on or before the day of the Advance all of the following, each dated (unless otherwise indicated) the date hereof, in form and substance satisfactory to Lender:

- (a) **Resolutions.** Resolutions of the Board of Directors (or other governing body) of Borrower and each other Obligated Party certified by the Secretary or an Assistant Secretary (or other custodian of records) of such Person which authorize the execution, delivery, and performance by such Person of this Agreement and the other Loan Documents to which such Person is or is to be a party;
- (b) **Incumbency Certificate.** A certificate of incumbency certified by a Responsible Officer certifying the names of the individuals or other Persons authorized to sign this Agreement and each of the other Loan Documents to which Borrower and each other Obligated Party is or is to be a party (including the certificates contemplated herein) on behalf of such Person together with specimen signatures of such individual Persons;
- (c) **Constituent Documents.** The Constituent Documents for Borrower and each other Obligated Party certified as of a date acceptable to Lender by the appropriate government officials of the state of incorporation or organization of Borrower and each other Obligated Party;
- (d) **Governmental Certificates.** Certificates of the appropriate government officials of the state of incorporation or organization of Borrower and each other Obligated Party as to the existence and good standing of Borrower, each dated within ten (10) days prior to the date of the Advance;

- (e) **Note.** The Note executed by Borrower;
- (f) **Security Documents.** The Security Documents executed by Borrower and other Obligated Parties;
- (g) **Financing Statements.** UCC financing statements reflecting Borrower and the other Obligated Parties, as debtors, and Lender, as secured party, which are required to grant a Lien which secures the Obligations and covering such Collateral as Lender may request;
- (h) **Guaranty.** The Guaranty executed by each Guarantor and personal financial statements of each Guarantor that are not signed, signed;
- (i) **Final Construction Budget.** The final construction budget for the Project;
- (j) **Intentionally Deleted;**
- (k) **Lien Searches.** The results of UCC, tax lien and judgment lien searches showing all financing statements and other documents or instruments on file against Borrower and each other Obligated Party in the appropriate filing offices, such search to be as of a date no more than ten (10) days prior to the date of the Advance;
- (l) **Intentionally Deleted;**
- (m) **Attorneys' Fees and Expenses.** Evidence that the costs and expenses (including reasonable attorneys' fees) referred to in *Section 11.1*, to the extent incurred, shall have been paid in full by Borrower;
- (n) **Intentionally Deleted;** and
- (o) **Closing Fees.** Evidence that the Commitment Fee and any other fees due at closing have been paid.

## SECTION 6

### REPRESENTATIONS AND WARRANTIES

To induce Lender to enter into this Agreement, and to make the Advance hereunder, Borrower represents and warrants to Lender that:

#### **Section 6.1 Entity Existence.**

Borrower (a) is duly incorporated or organized, as the case may be, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or organization; (b) has all requisite power and authority to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business in all jurisdictions in which the nature of its business makes such qualification necessary and where failure to so qualify could result in a Material Adverse Event. Each of Borrower and the other Obligated Parties has the

power and authority to execute, deliver, and perform its obligations under this Agreement and the other Loan Documents to which it is or may become a party.

### **Section 6.2 Financial Statements; Etc.**

Borrower has delivered to Lender financial statements of Borrower. Such financial statements are true and correct, have been prepared in accordance with GAAP, and fairly and accurately present, the financial condition of Borrower as of the respective dates indicated therein and the results of operations for the respective periods indicated therein. Neither Borrower nor any other Obligated Party has any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, or unrealized or anticipated losses from any unfavorable commitments except as referred to or reflected in such financial statements. No Material Adverse Event has occurred since the effective date of the financial statements referred to in this *Section 6.2*. Neither Borrower nor any of its Affiliates has any material guarantees, contingent liabilities, liabilities for taxes, or any unusual forward or long-term commitments, that are not reflected in the most-recent financial statements referred to in this *Section 6.2*.

### **Section 6.3 Action; No Breach.**

The execution, delivery, and performance by each of Borrower and each other Obligated Party of this Agreement and the other Loan Documents to which such Person is or may become a party and compliance with the terms and provisions hereof and thereof have been duly authorized by all requisite action on the part of such Person and do not and will not (a) violate or conflict with, or result in a breach of, or require any consent under (i) the Constituent Documents of such Person, (ii) any applicable law, rule, or regulation or any order, writ, injunction, or decree of any Governmental Authority or arbitrator, or (iii) any agreement or instrument to which such Person is a party or by which it or any of its Properties is bound or subject, or (b) constitute a default under any such agreement or instrument, or result in the creation or imposition of any Lien upon any of the revenues or assets of such Person.

### **Section 6.4 Operation of Business.**

Each of Borrower and its Affiliates possess all licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, necessary to conduct its respective businesses substantially as now conducted and as presently proposed to be conducted, and neither Borrower nor any of its Affiliates is in violation of any valid rights of others with respect to any of the foregoing.

### **Section 6.5 Litigation and Judgments.**

There is no action, suit, investigation, or proceeding before or by any Governmental Authority or arbitrator pending, or to the knowledge of Borrower, threatened against or affecting Borrower, any of its Affiliates, or any other Obligated Party that could, if adversely determined, result in a Material Adverse Event. There are no outstanding judgments against Borrower, any of its Affiliates, or any other Obligated Party.

### **Section 6.6 Rights in Properties; Liens.**

Each of Borrower and its Affiliates has good and indefeasible title to or valid leasehold interests in its respective Properties, including the Properties reflected in the financial statements described in *Section 6.2*, and none of the Properties of Borrower or any of its Affiliates is subject to any Lien, except as shown in the financial statements or a Permitted Lien.

**Section 6.7 Enforceability.**

This Agreement constitutes, and the other Loan Documents to which Borrower or any other Obligated Party is a party, when delivered, shall constitute legal, valid, and binding obligations of such Person, enforceable against such Person in accordance with their respective terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to the enforcement of creditors' rights.

**Section 6.8 Approvals.**

No authorization, approval, or consent of, and no filing or registration with, any Governmental Authority or third party is or will be necessary for the execution, delivery, or performance by Borrower or any other Obligated Party of this Agreement and the other Loan Documents to which such Person is or may become a party or the validity or enforceability thereof.

**Section 6.9 Taxes.**

Each of Borrower and its Affiliates has filed all tax returns (federal, state, and local) required to be filed, including all income, franchise, employment, Property, and sales tax returns, and has paid all of their respective liabilities for taxes, assessments, governmental charges, and other levies that are due and payable. Borrower knows of no pending investigation of Borrower or any of its Affiliates by any taxing authority or of any pending but unassessed tax liability of Borrower or any of its Affiliates.

**Section 6.10 Use of Proceeds; Margin Securities.**

Neither Borrower nor any of its Affiliates is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U, or X of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock.

**Section 6.11 Intentionally Deleted.**

**Section 6.12 Disclosure.**

No statement, information, report, representation, or warranty made by Borrower or any other Obligated Party in this Agreement or in any other Loan Document or furnished to Lender in connection with this Agreement or any of the transactions contemplated hereby contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to Borrower which is a

Material Adverse Event, or which might in the future be a Material Adverse Event that has not been disclosed in writing to Lender.

**Section 6.13 Intentionally Deleted.**

**Section 6.14 Agreements.**

Neither Borrower nor any of its Affiliates is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate or other organizational restriction, in each case which could result in a Material Adverse Event. Neither Borrower nor any of its Affiliates is in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

**Section 6.15 Compliance with Laws.**

Neither Borrower nor any of its Affiliates is in violation in any material respect of any law, rule, regulation, order, or decree of any Governmental Authority or arbitrator.

**Section 6.16 Intentionally Deleted.**

**Section 6.17 Intentionally Deleted.**

**Section 6.18 Intentionally Deleted.**

**Section 6.19 Intentionally Deleted.**

**Section 6.20 Foreign Assets Control Regulations and Anti-Money Laundering.**

Each Obligated Party is and will remain in compliance in all material respects with all United States economic sanctions laws, Executive Orders and implementing regulations as promulgated by the United States Treasury Department's Office of Foreign Assets Control ("*OFAC*"), and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Obligated Party and no Affiliate of any Obligated Party (a) is a Person designated by the United States government on the list of the Specially Designated Nationals and Blocked Persons (the "*SDN List*") with which a United States Person cannot deal with or otherwise engage in business transactions, (b) is a Person who is otherwise the target of United States economic sanction laws such that a United States Person cannot deal or otherwise engage in business transactions with such Person, or (c) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of United States economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under United States law.

**Section 6.21 Patriot Act.**

The Obligated Parties and each of their Affiliates are in compliance with (a) the Trading

with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (*31 CFR, Subtitle B Chapter V*, as amended), and all other enabling legislation or executive order relating thereto, (b) the Patriot Act, and (c) all other federal or state laws relating to “know your customer” and anti-money laundering rules and regulations. No part of the proceeds of the Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

## SECTION 7

### AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or Lender has any Commitment hereunder:

#### **Section 7.1 Reporting Requirements.**

Borrower will furnish to Lender:

(a) **Quarterly Financial Statements.** As soon as available, and in any event within thirty (30) days after the last day of each fiscal quarter of each fiscal year of Borrower, a copy of an unaudited financial report of Borrower as of the end of such fiscal quarter and for the portion of the fiscal year then ended, containing, balance sheets and statements of income, retained earnings, and cash flow, all in reasonable detail certified by a Responsible Officer to have been prepared in accordance with GAAP and to fairly and accurately present (subject to year-end audit adjustments) the financial condition and results of operations of Borrower as of the dates and for the periods indicated therein;

(b) **Weekly Statements.** Upon commencement of the disposition of limited partnership interests pursuant to *Section 8.3(b)*, a report of Borrower as of the end of each week containing a statement of capital contributions and related expenses, all in reasonable detail certified by a Responsible Officer;

(c) **Compliance Certificate.** Concurrently with the delivery of each of the financial statements referred to in *Sections 7.1(a)*, a certificate of a Responsible Officer of Borrower (i) stating that to the best of such officer’s knowledge, no Default has occurred and is continuing, or if a Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto, and (ii) showing in reasonable detail the calculations demonstrating compliance with the covenants set forth in *Section 9*;

(d) **Notice of Litigation.** Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any Governmental Authority or arbitrator affecting Borrower or any of its Affiliates which, if determined adversely to Borrower or such Affiliate, could be a Material Adverse Event;

(e) **Notice of Default.** As soon as possible and in any event within five (5) days after the occurrence of any Default, a written notice setting forth the details of such Default and the action that Borrower has taken and proposes to take with respect thereto;

(f) **Notice of Material Adverse Event.** As soon as possible and in any event within five (5) days after the occurrence thereof, written notice of any event or circumstance that could result in a Material Adverse Event;

(g) **Guarantor Financial Statements.** Borrower shall cause each Guarantor to provide the financial statements required pursuant to the terms of the Guaranty; and

(h) **General Information.** Promptly, such other information concerning Borrower, any of its Affiliates, or any other Obligated Party as Lender may from time to time request.

All representations and warranties set forth in the Loan Documents with respect to any financial information concerning Borrower or any Guarantor shall apply to all financial information delivered to Lender by Borrower, such Guarantor, or any Person purporting to be an Responsible Officer or other representative of Borrower or such Guarantor regardless of the method of transmission to Lender or whether or not signed by Borrower, such Guarantor, or such Responsible Officer or other representative, as applicable.

#### **Section 7.2 Maintenance of Existence; Conduct of Business.**

Borrower shall, and shall cause each of its Affiliates to, preserve and maintain its existence and all of its leases, privileges, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business. Borrower shall, and shall cause each of its Affiliates to, conduct its business in an orderly and efficient manner in accordance with good business practices.

#### **Section 7.3 Maintenance of Properties.**

Borrower shall, and shall cause each of its Affiliates to, maintain, keep, and preserve all of its Properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition.

#### **Section 7.4 Taxes and Claims.**

Borrower shall, and shall cause each of its Affiliates to, pay or discharge at or before maturity or before becoming delinquent (a) all taxes, levies, assessments, and governmental charges imposed on it or its income or profits or any of its Property, and (b) all lawful claims for labor, material, and supplies, which, if unpaid, might become a Lien upon any of its Property; *provided, however*, that neither Borrower nor any of its Affiliates shall be required to pay or discharge any tax, levy, assessment, or governmental charge which is being contested in good faith by appropriate proceedings diligently pursued, and for which adequate reserves in accordance with GAAP have been established.

**Section 7.5 Keeping Books and Records.**

Borrower shall, and shall cause each of its Affiliates to, maintain proper books of record and account in which full, true, and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to its business and activities.

**Section 7.6 Compliance with Laws.**

Borrower shall, and shall cause each of its Affiliates to, comply in all material respects with all applicable laws, rules, regulations, orders, and decrees of any Governmental Authority or arbitrator.

**Section 7.7 Compliance with Agreements.**

Borrower shall, and shall cause each of its Affiliates to, comply in all material respects with all agreements, contracts, and instruments binding on it or affecting its Properties or business.

**Section 7.8 Further Assurances.**

Borrower shall, and shall cause each of its Affiliates and each other Obligated Party to, execute and deliver such further agreements and instruments and take such further action as may be requested by Lender to carry out the provisions and purposes of this Agreement and the other Loan Documents and to create, preserve, and perfect the Liens of Lender in the Collateral.

**Section 7.9 Intentionally deleted.**

**SECTION 8**

**NEGATIVE COVENANTS**

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding:

**Section 8.1 Mergers, Etc.**

Borrower shall not, and shall not permit any of its Affiliates to, directly or indirectly, become a party to a merger or consolidation, or wind-up, dissolve, or liquidate.

**Section 8.2 Limitation on Issuance of Equity.**

Borrower shall not, and shall not permit any of its Affiliates to, directly or indirectly, issue, sell, assign, or otherwise dispose of (a) any of its stock or other equity interests except as permitted by Section 8.3, (b) any securities exchangeable for or convertible into or carrying any rights to acquire any of its stock or other equity interests, or (c) any option, warrant, or other right to acquire any of its stock or other equity interests.

**Section 8.3 Disposition of Partnership Interests.**

Borrower shall not sell, lease, assign, transfer, or otherwise dispose of any of its assets, except dispositions in the ordinary course of business. Borrower may permit dispositions of limited partner interests in GMI-Harrison 165, LP, a Texas limited partnership, through the issuance of additional limited partner interests in such entity (all of the net proceeds of which, after payment of applicable broker-dealer fees and commissions and payment in full of the CF Note, must be used to pay the Loan).

**Section 8.4 Nature of Business.**

Borrower shall not, and shall not permit any of its Affiliates to, engage in any business other than the businesses in which they are engaged as of the date hereof.

**Section 8.5 Accounting.**

Borrower shall not, and shall not permit any of its Affiliates to, change its fiscal year or make any change (a) in accounting treatment or reporting practices, except as required by GAAP and disclosed to Lender, or (b) in tax reporting treatment, except as required by law and disclosed to Lender.

**Section 8.6 OFAC.**

Borrower shall not, and shall not permit any of its Affiliates to, fail to comply with the laws, regulations and executive orders referred to in *Section 6.20* and *Section 6.21*.

**SECTION 9**

**FINANCIAL COVENANTS**

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding:

**Section 9.1 Net Worth.**

Borrower shall not permit its Net Worth to be less than \$10,000,000.00.

**SECTION 10**

**DEFAULT**

**Section 10.1 Events of Default.**

Each of the following shall be deemed an “*Event of Default*”:

- (a) Borrower shall fail to pay the Obligations or any part thereof shall not be paid when due or declared due;

**(b)** Borrower shall fail to provide to Lender timely any notice of Default as required by *Section 7.1(e)* of this Agreement or Borrower shall breach any provision of *Section 8* or *Section 9* of this Agreement;

**(c)** Any representation or warranty made or deemed made by Borrower or any other Obligated Party (or any of their respective officers) in any Loan Document or in any certificate, report, notice, or financial statement furnished at any time in connection with this Agreement shall be false, misleading, or erroneous in any material respect (without duplication of any materiality qualifier contained therein) when made or deemed to have been made;

**(d)** Borrower or any other Obligated Party shall fail to perform, observe, or comply with any covenant, agreement, or term contained in this Agreement or any other Loan Document (other than as covered by *Sections 10.1(a)* and *(b)*), and such failure continues for more than ten (10) days following the date such failure first began;

**(e)** Borrower or any other Obligated Party shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or a substantial part of its Property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

**(f)** An involuntary proceeding shall be commenced against Borrower or any other Obligated Party seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its Property, and such involuntary proceeding shall remain undismissed and unstayed for a period of thirty (30) days;

**(g)** This Agreement or any other Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by Borrower, any other Obligated Party or any of their respective equity holders, or Borrower or any other Obligated Party shall deny that it has any further liability or obligation under any of the Loan Documents, or any Lien created by the Loan Documents shall for any reason cease to be a valid perfected Lien (subject and subordinate to Permitted Liens in accordance with the terms of the Subordination Letter), upon any of the Collateral purported to be covered thereby;

**(h)** Borrower, any Guarantor or any other Obligated Party that is an individual shall have died or have been declared incompetent by a court of proper jurisdiction or shall become insolvent, fail to pay its debts generally as they become due, or voluntarily seek, consent to or acquiesce in the benefit of any debtor relief law that could suspend or otherwise adversely affect the rights and remedies of Lender hereunder, and the

Guarantors not so affected fail to maintain Liquid Assets, free and clear of all Liens, in the aggregate, having a value of at least \$10,000,000.00 as determined by Lender in its sole discretion. "Liquid Assets" means cash, certificates of deposit issued by, and held at, a bank acceptable to Lender which mature within sixty (60) days from the date of issuance, and marketable securities approved in writing by Lender.

- (i) WILLIAM P. GLASS shall cease to be active in the management of Borrower;
- (j) Borrower or any other Obligated Party, or any of their Properties, revenues, or assets, shall become subject to an order of forfeiture, seizure, or divestiture (whether under RICO or otherwise) and the same shall not have been discharged within thirty (30) days from the date of entry thereof;
- (k) More than nineteen percent (19%) of the record or beneficial ownership of Borrower shall have been transferred, assigned or hypothecated to any Person, when compared to such ownership as of the date of this Agreement;
- (l) Borrower or any other Obligated Party shall fail to discharge within a period of thirty (30) days after the commencement thereof any attachment, sequestration, or similar proceeding or proceedings against any of its assets or Properties;
- (m) A final judgment or judgments for the payment of money in excess of \$25,000.00 in the aggregate shall be rendered by a court or courts against Borrower or any other Obligated Party and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and Borrower or such Obligated Party shall not, within such period of thirty (30) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal;
- (n) Borrower or any other Obligated Party shall default in their obligations under the CF Note and the documents related thereto; or
- (o) Lender determines that a Material Adverse Event has occurred or a circumstance exists that could result in a Material Adverse Event.

## **Section 10.2 Remedies Upon Default.**

If any Event of Default shall occur and be continuing, then Lender may without notice declare the Obligations or any part thereof to be immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower; *provided, however*, that upon the occurrence of an Event of Default under **Section 10.1(e)** or **(f)**, the Obligations shall become immediately due and payable, in each case without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower. In addition to the foregoing, if any Event of Default

shall occur and be continuing, Lender may exercise all rights and remedies available to it in law or in equity, under the Loan Documents, or otherwise.

### **Section 10.3 Application of Funds.**

After the exercise of remedies provided for in *Section 10.2* (or after the Loan has automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by Lender in such order as it elects in its sole discretion.

### **Section 10.4 Performance by Lender.**

If Borrower shall fail to perform any covenant or agreement contained in any of the Loan Documents, then Lender may perform or attempt to perform such covenant or agreement on behalf of Borrower. In such event, Borrower shall, at the request of Lender, promptly pay to Lender any amount expended by Lender in connection with such performance or attempted performance, together with interest thereon at the Default Interest Rate from and including the date of such expenditure to but excluding the date such expenditure is paid in full. Notwithstanding the foregoing, it is expressly agreed that Lender shall not have any liability or responsibility for the performance of any covenant, agreement, or other obligation of Borrower under this Agreement or any other Loan Document.

## **SECTION 11**

### **MISCELLANEOUS**

#### **Section 11.1 Expenses.**

Borrower hereby agrees to pay on demand: (a) all costs and expenses of Lender in connection with the preparation, negotiation, execution, and delivery of this Agreement and the other Loan Documents and any and all amendments, modifications, renewals, extensions, and supplements thereof and thereto, including, without limitation, the reasonable fees and expenses of legal counsel, advisors, consultants, and auditors for Lender; (b) all costs and expenses of Lender in connection with any Default and the enforcement of this Agreement or any other Loan Document, including, without limitation, the reasonable fees and expenses of legal counsel, advisors, consultants, and auditors for Lender; (c) all transfer, stamp, documentary, or other similar taxes, assessments, or charges levied by any Governmental Authority in respect of this Agreement or any of the other Loan Documents; (d) all costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any Lien contemplated by this Agreement or any other Loan Document; and (e) all other costs and expenses incurred by Lender, in connection with this Agreement or any other Loan Document, in any litigation, dispute, suit, proceeding or action; the enforcement of its rights and remedies, and the protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges (including Lender's internal charges) incurred in connection with evaluating, observing, collecting, examining, auditing, appraising, selling, liquidating, or otherwise disposing of the Collateral or other assets of Borrower.

## **Section 11.2 INDEMNIFICATION.**

BORROWER SHALL INDEMNIFY LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, AND AGENTS FROM, AND HOLD EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO (A) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS, (B) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS, (C) ANY BREACH BY BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE LOAN DOCUMENTS, (D) THE PRESENCE, RELEASE, THREATENED RELEASE, DISPOSAL, REMOVAL, OR CLEANUP OF ANY HAZARDOUS MATERIAL LOCATED ON, ABOUT, WITHIN, OR AFFECTING ANY OF THE PROPERTIES OR ASSETS OF BORROWER OR ANY OF ITS AFFILIATES OR ANY OTHER OBLIGATED PARTY, OR (E) ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, RELATING TO ANY OF THE FOREGOING. WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH PERSON TO BE INDEMNIFIED UNDER THIS SECTION SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM THE SOLE CONTRIBUTORY OR ORDINARY NEGLIGENCE OF SUCH PERSON; PROVIDED, HOWEVER, THAT THE INDEMNITY SET FORTH IN THIS *SECTION 11.2* WILL NOT APPLY TO CLAIMS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, ADVISORS, OR REPRESENTATIVES, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN FINAL AND NONAPPEALABLE JUDGMENT.

## **Section 11.3 Limitation of Liability.**

Neither Lender nor any Affiliate, officer, director, employee, attorney, or agent of Lender shall have any liability with respect to, and Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by Borrower or any other Obligated Party in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Borrower hereby waives, releases, and agrees not to sue Lender or any of Lender's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

#### **Section 11.4 No Duty.**

All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Lender shall have the right to act exclusively in the interest of Lender and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to Borrower or any of Borrower's equity holders, Affiliates, officers, employees, attorneys, agents, or any other Person.

#### **Section 11.5 Lender Not Fiduciary.**

The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

#### **Section 11.6 Equitable Relief.**

Borrower recognizes that in the event Borrower fails to pay, perform, observe, or discharge any or all of the Obligations, any remedy at law may prove to be inadequate relief to Lender. Borrower therefore agrees that Lender, if Lender so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

#### **Section 11.7 No Waiver; Cumulative Remedies.**

No failure on the part of Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The rights and remedies provided for in this Agreement and the other Loan Documents are cumulative and not exclusive of any rights and remedies provided by law.

#### **Section 11.8 Successors and Assigns.**

This Agreement is binding upon and shall inure to the benefit of Lender and Borrower and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights, duties, or obligations under this Agreement or the other Loan Documents without the prior written consent of Lender.

### **Section 11.9 Survival.**

All representations and warranties made in this Agreement or any other Loan Document or in any document, statement, or certificate furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and no investigation by Lender or any closing shall affect the representations and warranties or the right of Lender to rely upon them. Without prejudice to the survival of any other obligation of Borrower hereunder, the obligations of Borrower under Sections 11.1 and 11.2 shall survive repayment of the Obligations.

### **Section 11.10 Amendment.**

The provisions of this Agreement and the other Loan Documents to which Borrower is a party may be amended or waived only by an instrument in writing signed by the parties hereto.

### **Section 11.11 Notices.**

Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission) and mailed, faxed or delivered, to the address, facsimile number or subject to the last sentence hereof electronic mail address specified for notices below the signatures hereon or to such other address as shall be designated by such party in a notice to the other parties. All such other notices and other communications shall be deemed to have been given or made upon the earliest to occur of (a) actual receipt by the intended recipient or (b)(i) if delivered by hand or courier, when signed for by the designated recipient; (ii) if delivered by mail, four (4) business days after deposit in the mail, postage prepaid; (iii) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (iv) if delivered by electronic mail (which form of delivery is subject to the provisions of the last sentence below), when delivered; *provided, however*, that notices and other communications pursuant to **Section 2** shall not be effective until actually received by Lender. Electronic mail and intranet websites may be used only to distribute routine communications, such as financial statements and other information, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

### **Section 11.12 Governing Law; Venue; Service of Process.**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS; *PROVIDED THAT* LENDER SHALL RETAIN ALL RIGHTS UNDER FEDERAL LAW. THIS AGREEMENT HAS BEEN ENTERED INTO IN DALLAS COUNTY, TEXAS, AND IS PERFORMABLE FOR ALL PURPOSES IN DALLAS COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT ANY LAWSUIT, ACTION, OR PROCEEDING THAT IS BROUGHT (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, OR THE ACTIONS OF THE LENDER IN THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS SHALL BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED IN DALLAS COUNTY, TEXAS. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY

(A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH LAWSUIT, ACTION, OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND (C) FURTHER WAIVES ANY CLAIM THAT IT MAY NOW OR HEREAFTER HAVE THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO AGREE THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED AT THE ADDRESS FOR NOTICES REFERENCED IN *SECTION 11.11* HEREOF.

**Section 11.13 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 11.14 Severability.**

Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal.

**Section 11.15 Headings.**

The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**Section 11.16 Participations; Etc.**

Lender shall have the right at any time and from time to time to grant participations in, and sell and transfer, the Obligations and any Loan Documents. Each actual or proposed participant or assignee, as the case may be, shall be entitled to receive all information received by Lender regarding Borrower and its Affiliates, including, without limitation, information required to be disclosed to a participant or assignee pursuant to Banking Circular 181 (Rev., August 2, 1984), issued by the Comptroller of the Currency (whether the actual or proposed participant or assignee is subject to the circular or not).

**Section 11.17 Construction.**

Borrower and Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower and Lender.

### **Section 11.18 Independence of Covenants.**

All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or such condition exists.

### **Section 11.19 WAIVER OF JURY TRIAL**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF LENDER IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS *SECTION 11.19*.

### **Section 11.20 Additional Interest Provision.**

It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable law governing the maximum rate or amount of interest payable on the indebtedness evidenced by the Note, any Loan Document, and the Related Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under applicable law). If the applicable law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (b) contracted for, charged, taken, reserved or received by reason of Lender's exercise of the option to accelerate the maturity of the Note and/or any and all indebtedness paid or payable by Borrower to Lender pursuant to any Loan Document other than the Note (such other indebtedness being referred to in this Section as the "*Related Indebtedness*"), or (c) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of the Note and/or the Related Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Rate theretofore collected by Lender shall be credited on the principal balance of the Note and/or the Related Indebtedness (or, if the Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of

the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; *provided, however*, if the Note or Related Indebtedness has been paid in full before the end of the stated term thereof, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower and/or credit such excess interest against the Note and/or any Related Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by the Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Related Indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to this Note and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

#### **Section 11.21 Ceiling Election.**

To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Rate payable on the Note and/or any other portion of the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

#### **Section 11.22 USA Patriot Act Notice.**

Lender hereby notifies Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower and each other Obligated Party, which information includes the name and address of Borrower and each other Obligated Party and other information that will allow Lender to identify Borrower and each other Obligated Party in accordance with the Patriot Act. In addition, Borrower agrees to (a) ensure

that no Person who owns a controlling interest in or otherwise controls Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Order, (b) not to use or permit the use of proceeds of the Obligations to violate any of the foreign asset control regulations of the OFAC or any enabling statute or Executive Order relating thereto, and (c) comply with the applicable laws.

**Section 11.23 NOTICE OF FINAL AGREEMENT.**

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*

EXECUTED to be effective as of the date first written above.

**BORROWER:**

**GENTRY MILLS CAPITAL, L.L.C.,**  
a Texas limited liability company

By:   
\_\_\_\_\_  
William P. Glass, Manager

Address for Notices:

251 O'Connor Ridge Boulevard  
Suite 100  
Irving, Texas 75038  
Fax No.: 972-759-8490  
Telephone No.: 972-759-8725  
Attention: William P. Glass  
e-mail: [bglass@gentrymillscapital.com](mailto:bglass@gentrymillscapital.com)

**LENDER:**

**LSM INITIATIVES, LLC**

By: \_\_\_\_\_  
Name: Larry Long  
Title: Manager

Address for Notices:  
3831 Turtle Creek Blvd., Apt. 16B  
Dallas, Texas 75219  
Attention: Larry Long  
e-mail: [larrylongtws@hotmail.com](mailto:larrylongtws@hotmail.com)

EXECUTED to be effective as of the date first written above.

**BORROWER:**

**GENTRY MILLS CAPITAL, L.L.C.,**  
a Texas limited liability company

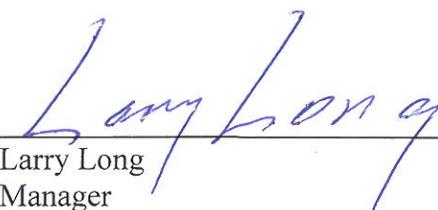
By: \_\_\_\_\_  
William P. Glass, Manager

Address for Notices:

251 O'Connor Ridge Boulevard  
Suite 100  
Irving, Texas 75038  
Fax No.: 972-759-8490  
Telephone No.: 972-759-8725  
Attention: William P. Glass  
e-mail: [bglass@gentrymillscapital.com](mailto:bglass@gentrymillscapital.com)

**LENDER:**

**LSM INITIATIVES, LLC**

By:  \_\_\_\_\_  
Name: Larry Long  
Title: Manager

Address for Notices:  
3831 Turtle Creek Blvd., Apt. 16B  
Dallas, Texas 75219  
Attention: Larry Long  
e-mail: [larrylongtws@hotmail.com](mailto:larrylongtws@hotmail.com)

**EXHIBIT A**

**COMPLIANCE CERTIFICATE**

FOR QUARTER ENDED \_\_\_\_\_ (THE “*SUBJECT PERIOD*”)

LENDER: LSM Initiatives, LLC

BORROWER: Gentry Mills Capital, L.L.C.

This Compliance Certificate (this “*Certificate*”) is delivered under the Credit Agreement (the “*Credit Agreement*”) dated as of May 22, 2018, by and between Borrower and Lender. Capitalized terms used in this Certificate shall, unless otherwise indicated, have the meanings set forth in the Credit Agreement. The undersigned hereby certifies to Lender as of the date hereof that: (a) he/she is the \_\_\_\_\_ of Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to Lender on behalf of Borrower; (b) he/she has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of Borrower during the Subject Period; (c) during the Subject Period, Borrower performed and observed each covenant and condition of the Loan Documents applicable to it and no Event of Default or Potential Default currently exists or has occurred which has not been cured or waived by Lender; (d) the representations and warranties of Borrower contained in *Article VI* of the Credit Agreement, and any representations and warranties of Borrower that are contained in any document furnished at any time under or in connection with the Loan Documents, are true and correct on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Certificate, the representations and warranties contained in *Section 6.2* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *Section 7.1* of the Credit Agreement, including the statements in connection with which this Certificate is delivered; (e) intentionally deleted; (f) the financial covenant analyses and information set forth below are true and accurate on and as of the date of this Certificate; and (g) the status of compliance by Borrower with certain covenants of the Credit Agreement at the end of the Subject Period is as set forth below:

In Compliance as of  
End of Subject Period  
(Please Indicate)

1. Net Worth (NW)  
Minimum of \$10,000,000.00 at all times (NW is defined as  
total owners' assets less total liabilities).

Yes      No

NW= \_\_\_\_\_

*IN WITNESS WHEREOF*, the undersigned has executed this Certificate as of  
\_\_\_\_\_, \_\_\_\_\_.

**GENTRY MILLS CAPITAL, L.L.C.,**  
a Texas limited liability company

By: \_\_\_\_\_  
William P. Glass, Manager