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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States Securities and Exchange
Commission,

Plaintiff,

v.

Jonathan Larmore, *et al.*,

Defendants, and

Michelle Larmore; Marcia Larmore; CSL
Investments, LLC; MML Investments,
LLC; Spike Holdings, LLC; and JMMAL
Investments, LLC,

Relief Defendants.

Case No.: 2:23-cv-02470-DLR

**QUADRANT MEZZ FUND LP'S
MOTION FOR LEAVE TO
INTERVENE TO FILE AND BE
HEARD ON ITS
LIMITED OPPOSITION TO THE
RECEIVER'S MOTION FOR
ORDERS (I) APPROVING (A) THE
ENGAGEMENT AND
COMPENSATION OF MARCUS &
MILLICHAP REAL ESTATE
INVESTMENT SERVICES AS
BROKER FOR THE SALE OF THE
PROPERTIES, (B) THE SALE AND
AUCTION PROCEDURES FOR THE
SALE OF THE PROPERTIES; (II)
APPROVING THE SALE OF THE
PROPERTIES AFTER AUCTION,
FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND
INTERESTS; AND (III) GRANTING
RELATED RELIEF**

Quadrant Mezz Fund, LP, ("Quadrant") respectfully moves this Court pursuant to Rule 24 of the Federal Rules of Civil Procedure for leave to intervene in the above captioned case in order to defend its interests and, particularly, to file and be heard on its attached *Limited Opposition to the Receiver's Motion For Orders (I) Approving (A) The Engagement And Compensation Of Marcus & Millichap Real Estate Investment*

Services As Broker For The Sale Of The Properties, (B) The Sale And Auction Procedures For The Sale Of The Properties; (II) Approving The Sale Of The Properties After Auction, Free And Clear Of All Liens, Claims, Encumbrances And Interests; And (III) Granting Related Relief (the “Limited Objection”), which is attached as **Exhibit A**.

A proposed order on this Motion is attached hereto as **Exhibit B**. Quadrant would respectfully show as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 15 U.S.C. § 78aa. Venue is proper before this Court pursuant to 15 U.S.C. §§ 78aa(a) and 80b-14.

2. The statutory predicate for the relief requested in this Motion is Rule 24 of the Federal Rules of Civil Procedure (the “Federal Rules”).

FACTS

3. On November 28, 2023, the Securities & Exchange Commission (“SEC”) commenced the above-captioned action against Jonathan Larmore, ArciTerra Companies, LLC, ArciTerra Note Advisors II, LLC, ArciTerra Note Advisors III, LLC, ArciTerra Strategic Retail Advisors, LLC and Cole Capital Funds, LLC as defendants (hereafter, the “Receivership Defendants”), and Michelle Larmore, Marcia Larmore, CSL Investments, LLC, MML Investments, LLC, Spike Holdings, LLC and JMMAL Investments as relief defendants.

4. On December 21, 2023, this Court entered an order (the “Receivership Order”) establishing a receivership estate (the “Receivership Estate”) over, and appointing Allen Applebaum as receiver (the “Receiver”) for, the Receivership

6. Specifically, Quadrant is the lender under a \$10,000,000 mezzanine loan (the “Mezzanine Loan”) made to certain of the Receivership Entities (the “Mezzanine Borrowers”). The Mezzanine Loan is secured by the interests of the Mezzanine Borrowers in certain single purpose entities that own real property and improvements

7. located in Colorado, Indiana, Georgia, Illinois, Iowa, Louisiana, New York, North Carolina and Texas (collectively, the “Properties”). A more detailed description of the Mezzanine Loan and the Properties is contained in the Limited Opposition, and incorporated herein.

8. The Mezzanine Borrowers are in default of their obligations under Mezzanine Loan, and Quadrant is currently enjoined under the Receivership Order from enforcing its rights under the Mezzanine Loan, notwithstanding that it is not currently a party to this action.

9. On July 2, 2025, the Receiver filed the *Motion For Orders (I) Approving (A) he Engagement And Compensation Of Marcus & Millichap Real Estate Investment Services As Broker For The Sale Of The Properties, (B) The Sale And Auction Procedures For The Sale Of The Properties; (II) Approving The Sale Of The Properties After Auction, Free And Clear Of All Liens, Claims, Encumbrances And Interests; And*

1 10. (III) *Granting Related Relief* [Dkt. No. 394] (the Motion”), seeking
2 approval of procedures relating to the sale of the Properties. The deadline to object to
3 the Motion is July 16, 2025 (the “Objection Deadline”).
4

5 11. As set forth in detail in the Limited Opposition, which is incorporated
6 herein, the Motion adversely impacts Quadrant’s rights under the Mezzanine Loan, and
7 its right to be paid the proceeds from the sale after the payment of a senior loan secured
8 by the Properties, and prior to any payment or distribution to the Receivership Estate or
9 its creditors.
10

11 12. Quadrant shows, via the attached Limited Objection, that it is entitled to
12 intervene pursuant to Rule 24(a)(2) of the Federal Rules as a matter of right, as its rights
13 may be adversely affected by the approval of the Sale Motion.
14

15 13. Rule 24 of the Federal Rules permits any party that “claims an interest
16 relating to the property or transaction that is the subject of the action, and is so situated
17 that disposing of the action may as a practical matter impair or impede the movant’s
18 ability to protect its interests” to intervene in a federal lawsuit. Fed. R. Civ. P. 24(a)(2).
19 This Court interprets Rule 24(a)(2) to require a prospective intervenor to satisfy four
20 requirements to intervene as a matter of right: “(1) the motion must be timely; (2) the
21 applicant must claim a ‘significantly protectable’ interest relating to the property or
22 transaction which is the subject of the action; (3) the applicant must be so situated that
23 the disposition of the action may as a practical matter impair or impede its ability to
24 protect that interest; and (4) the applicant's interest must be inadequately represented by
25 the parties to the action.” *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 273
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1 (D. Az. 2020) (citing *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir.
2 2011)).

3
4 14. Quadrant has satisfied all of these requirements and, as a result, is entitled
5 to intervene to defend its interests.

6 15. This motion to intervene is timely because it is being filed by the Objection
7 Deadline for the sale Motion.

8
9 16. Quadrant has a significantly protectable interest in the sale process.

10 17. As set forth in more detail in the Limited Objection, the Sale Motion fails
11 to maximize the value of sale proceeds, and recognize the priority of Quadrant's security
12 interests over any interest of the Receivership Estate and its creditors in any sale
13 proceeds because, among other things:

14
15 (i) The sale procedures do not require that Quadrant's claim under
16 the Mezzanine Loan be paid before *any* benefit can flow to the
17 Receivership Estate, and default interest will continue to
18 accrue to the detriment of the Receivership Estate and its
19 creditors until Quadrant's claim is paid in full; and

20
21 (ii) The reserve price (the "Reserve Price") for the Properties at the
22 Auction is so artificially low, and below market, that a sale at
23 the Reserve Price would not result in sufficient sale proceeds
24 for Quadrant to recover even the outstanding principal due
25 under the Mezzanine Loan, and there would be no funds
26
27
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1 available for any distribution to the Receivership Estate and its
2 creditors at the Reserve Price.

3
4 18. Additionally, Quadrant has a substantial interest in this action because it s
5 currently subject to the injunction set forth in the Receivership Order, notwithstanding
6 that it is not currently a party to this action.

7
8 19. Neither the SEC nor the defendants in this case can represent Quadrant's
9 interests in these proceedings because the interests of the SEC and the defendants are
10 adverse to Quadrant's interest in having proceeds of the proposed sale used to pay the
11 Mezzanine Loan.

12
13 20. Counsel for Quadrant is prepared to participate in the hearing on the Sale
14 Motion.

15
16 **WHEREFORE**, Quadrant prays that this Motion be granted and that this Court
17 direct that the attached Limited Objection be filed, and that counsel for Quadrant may
18 participate in any hearing on the Sale Motion, and for such other and further relief to
19 which Quadrant is entitled.

20
21 Dated: July 16, 2025

Respectfully submitted,

22
23 **TALG, LTD.**

24 By: /s/ Cassidy Kitterman

25
26 Cassidy Kitterman, Esq.

27 Attorneys for Quadrant Mezz Fund LP
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INDEX TO EXHIBITS

Exhibit A – Limited Opposition to Sale

Exhibit B – Proposed order

EXHIBIT A

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Quadrant Mezz Fund, LP, ("Quadrant") as and for its limited opposition to the
*Receiver's Motion For Orders (I) Approving (A) The Engagement And Compensation Of
Marcus & Millichap Real Estate Investment Services As Broker For The Sale Of The*

¹ Bruce J. Zabarauskas, Esq. of Holland & Knight LLP will be filing a motion shortly to appear *pro hac vice* as co-counsel for Quadrant in this case.

1 *Properties, (B) The Sale And Auction Procedures For The Sale Of The Properties; (II)*
2 *Approving The Sale Of The Properties After Auction, Free And Clear Of All Liens,*
3 *Claims, Encumbrances And Interests; And (III) Granting Related Relief [Dkt. No. 394],*
4
5 would respectfully show as follows:

6 1. On November 28, 2023, the Securities & Exchange Commission
7 commenced the above-captioned action against Jonathan Larmore, ArciTerra
8 Companies, LLC, ArciTerra Note Advisors II, LLC, ArciTerra Note Advisors III, LLC,
9 ArciTerra Strategic Retail Advisors, LLC and Cole Capital Funds, LLC as defendants
10 (hereafter, the “Receivership Defendants”), and Michelle Larmore, Marcia Larmore,
11 CSL Investments, LLC, MML Investments, LLC, Spike Holdings, LLC and JMMAL
12 Investments as relief defendants.
13

14 2. On December 21, 2023, this Court entered an order (the “Receivership
15 Order”) establishing a receivership estate (the “Receivership Estate”) over, and
16 appointing Allen Applebaum as receiver (the “Receiver”) for, the Receivership
17 Defendants and certain of their affiliated entities (collectively, the “Receivership
18 Entities”), including without limitation the Senior Borrowers (as hereafter defined) and
19 the Mezzanine Borrowers (as hereafter defined), who are not defendants to this action.
20 [Dkt. No. 77]. The Receivership Order also enjoined non-parties to this action, such as
21 the Senior Lender (as hereafter defined) and Quadrant, from accelerating their debt and
22 enforcing their rights as secured creditors of any of the Receivership Entities (who are
23 also not defendants in this action).
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The Senior Loan

3. On or about February 1, 2020, Grass River Real Estate Credit Partners Loan Funding, LLC (“Grass River”) made a loan (the “Senior Loan”) in the original principal amount of \$60,000,000 to the entities listed in the chart below (collectively, the “Senior Borrowers”).² Each of the Senior Borrowers is a special purpose entity, owning only the real property and improvements (collectively, the “Properties”) described below.

Senior Borrower	Properties
AT Seven Hills Aurora Co II, LLC	18511, 18581, 18757 and 18883 E. Hampden Avenue, Aurora, Colorado 80013
AT ALTUS Cumberland CA II, LLC	2997 and 2999 Cumberland Blvd., Smyrna, Georgia 30339
AT Eastman GA II, LLC	970 Indian Drive, Eastman, Georgia 31023
ATA Lanier Fayetteville GA II, LLC	320 West Lanier, Fayetteville, Georgia 30214
AT PT Danville IL II, LLC	22 West Newell Road, Danville, Illinois 61834
AT New Lenox IL-Inline II, LLC	2021 East Laraway Road, New Lenox, Illinois 60451
AT Auburn Plaza IN II, LLC	506 N. Grandstaff Drive, Auburn, Indiana 46706
AT Plainfield Village II, LLC	160 Plainfield Village Drive, Plainfield, Indiana 46168
Arciterra Westgate Indianapolis IN II, LLC	5173 W. Washington Street, Indianapolis, Indiana 46241
AT HL Burlington IA II, LLC	3351 Agency Street, Burlington, Iowa 52601
AT Ville Platte LA II, LLC	925 E. LaSalle Street, Villa Platte, Louisiana 70586
AT Sweden NY II, LLC	1561 Nathaniel Poole Trail, Brockport, New York 14420

² Each of the Senior Borrowers is a Receivership Entity, except for AT Plainfield Village II, LLC and Arciterra Westgate Indianapolis IN II, LLC (collectively, the “Senior Indiana Receivership Borrowers”), which are subject to a separate, receivership proceeding which is pending before the Indiana state court (the “Indiana State Court”).

AT Mayodan NC II, LLC	131 Commerce Drive, Mayodan, North Carolina 27027
AT Longview TX II, LLC	711 Estes Drive, Longview, Texas 75602

4. Each of the Senior Borrowers granted a deed of trust or mortgage in such Properties to Grass River, along with an assignment of the leases and rents therefrom, to secure its obligations under the Senior Loan. The Senior Loan is serviced by 3650 REIT Loan Servicing LLC, as special servicer (“3650,” and together with Grass River, the “Senior Lender”).

5. The non-default interest rate under the Senior Loan is 3.67% and default interest is an additional 5% over the non-default rate, capped at the maximum rate allowed by law. The Senior Lien is governed by New York law.

6. The Motion states that the Senior Lender asserts that the outstanding amount due under the Senior Loan is approximately \$69,200,000, which includes approximately \$6,000,000 in default interest through July 1, 2025 and a prepayment premium of \$8,300,000. Motion at ¶ 1. However, the Receiver asserts that it can satisfy the Senior Loan through a combination of defeasance at a cost of \$55,000,000 to \$57,000,000 plus the payment of approximately \$6,000,000 from sale proceeds. Motion at ¶ 5.

The Mezzanine Loan

7. Each of the Senior Borrowers is a single member Delaware limited liability company and is wholly owned by the entities listed in the chart below (hereafter, the “Mezzanine Borrowers”). The sole asset of each Mezzanine Borrower is its 100% ownership interest in the corresponding Senior Borrower:

Mezzanine Borrower	Senior Borrower
AT Seven Hills Aurora Member, LLC	AT Seven Hills Aurora Co II, LLC
AT ALTUS Cumberland Member, LLC	AT ALTUS Cumberland CA II, LLC
AT Eastman Member, LLC	AT Eastman GA II, LLC
ATA Lanier Fayetteville Member, LLC	ATA Lanier Fayetteville GA II, LLC
AT PT Danville Member, LLC	AT PT Danville IL II, LLC
AT New Lenox-IL Member, LLC	AT New Lenox IL-Inline II, LLC
AT Auburn Plaza Member, LLC	AT Auburn Plaza IN II, LLC
AT Plainfield Village Member, LLC	AT Plainfield Village II, LLC
Arciterra Westgate Indianapolis Member, LLC	Arciterra Westgate Indianapolis IN II, LLC
AT HL Burlington Member, LLC	AT HL Burlington IA II, LLC
AT Ville Platte LA Member, LLC	AT Ville Platte LA II, LLC
AT Sweden Member, LLC	AT Sweden NY II, LLC
AT Mayodan Member, LLC	AT Mayodan NC II, LLC
AT Longview Member, LLC	AT Longview TX II, LLC

8. On or about February 1, 2020, Quadrant made a mezzanine loan (the “Mezzanine Loan”) in the original principal amount of \$10,000,000 to the Mezzanine Borrowers.³ The Mezzanine Borrowers’ obligations under the Mezzanine Loan are secured by security interests (the “Mezzanine Security Interests”) in the Mezzanine Borrowers’ 100% ownership interest in the Senior Borrowers. The Mezzanine Security Interests are duly perfected by both: (i) Quadrant’s physical possession of the membership certificates evidencing the Mezzanine Borrowers’ 100% ownership interest in each of the Senior Borrowers; and (ii) a UCC financing statement filed with the Delaware Secretary of State. *See* Declaration of Matthew Welsh, a copy of which is annexed hereto as Exhibit 1; Mezzanine Loan Agreement, a copy of which is annexed

³ Each of the Mezzanine Borrowers is a Receivership Entity, except for AT Plainfield Village Member, LLC, and ArciTerra Westgate Indianapolis Member, LLC, (collectively, and together with the Senior Indiana Receivership Borrowers, the “Indiana Receivership Entities”) which are subject to a separate receivership in Indiana State Court.

1 hereto as Exhibit 2; Promissory Note – Mezzanine Loan, a copy of which is annexed
2 hereto as Exhibit 3; Mezzanine Pledge and Security Agreement, a copy of which (without
3 exhibits) is annexed hereto as Exhibit 4; a UCC financing statement filed with the
4 Delaware Secretary of State, a copy of which is annexed hereto as Exhibit 5.

5
6 9. The non-default interest rate under the Mezzanine Loan is 12%. The
7 default interest rate is an additional 5% over the non-default rate, as capped as the
8 maximum rate allowed by law. The Mezzanine Loan is governed by New York law.
9
10 Exhibit 2 at §§ 2.5, 17.2 and Exhibit A thereto..

11 10. The outstanding balance under the Mezzanine Loan as of October 4, 2025
12 (not including legal fees and expenses incurred after June 30, 2025) will be
13 \$16,499,196.82, consisting of: (i) \$9,925,756.96 in principal, (ii) \$2,310,177.96 in non-
14 default interest; (iii) \$1,072,881.56 in default interest; (iv) \$58,357.68 in legal fees and
15 expenses; (v) \$2,537.62 in site visit expenses; (vi) \$3,129,235.04 in prepayment
16 premium; and (vii) a \$250 in pay-off quote expense.⁴

17
18 **The Intercreditor Agreement Between The Senior Lender And Quadrant**

19
20 11. At the time of their respective entry into the Senior Loan and Mezzanine
21 Loan, the Senior Lender and Quadrant entered into an intercreditor agreement, dated as
22 of February 10, 2020 (the “Intercreditor Agreement”). A copy of the Intercreditor
23 Agreement is annexed hereto as Exhibit 6.

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27 ⁴ The pay-off is dated as of October 4, 2025 because the Motion contemplates auctions in
28 September with closings in October. This pay-off amount does not take into account
\$49,016.82, being held in reserves by Quadrant, which would be applied upon a closing of
any sale.

1 12. Section 6 of the Intercreditor Agreement governs the parties' rights in the
2 event that Quadrant forecloses under the Mezzanine Loan on its security interest in the
3 membership interests in the Senior Borrowers. Specifically, § 6 of the Intercreditor
4 Agreement provides that in the event Quadrant forecloses on the Mezzanine Loan and
5 takes title to the ownership interests in the Senior Borrowers, then "the terms, conditions
6 and provisions of the Senior Loan Documents for the balance of the term thereof, which
7 shall not be accelerated by Senior Lender solely due to such acquisition shall remain in
8 full force and effect."

9
10
11 13. Section 14 of the Intercreditor Agreement provides Quadrant the right to
12 purchase the Senior Loan upon certain "Purchase Option Events," including the
13 appointment of 3650 as special servicer due to continuing events of default under the
14 Senior Loan. The Senior Lender has provided Quadrant with a notice that such Purchase
15 Option Events have occurred. As such, Quadrant also currently has the right to purchase
16 the Senior Loan, which does not appear to be contemplated by the Sale Motion or
17 proposed sale procedures.
18
19

20 **The Status Of The Senior Loan And The Mezzanine Loan**

21 14. A non-monetary event of default occurred under both the Senior Loan and
22 the Mezzanine Loan when: (i) the Indiana State Court appointed a receiver for the Indiana
23 Receivership Entities on August 17, 2023; and (ii) this Court entered the Receivership
24 Order. Such events of default are continuing.
25

26 15. According to the Motion, no payment defaults on the Senior existed at the
27 time of the Receiver's appointment, (Motion at ¶ 12) and upon information and belief,
28 the Receiver has made interest-only payments on the Senior Loan since his appointment,

1 notwithstanding that the Properties appear to have generated sufficient cash flow to make
2 all required interest and principal payments under the Senior Loan. The Senior Lender
3 has not accelerated the obligations under the Senior Loan, and it is enjoined from doing
4 so under the terms of the Receivership Order.
5

6 16. As of the date of the commencement of this action, the Mezzanine
7 Borrowers were current on their payment obligations under the Mezzanine Loan. Since
8 his appointment, the Receiver has not made any payments to the Mezzanine Lender
9 despite the fact that the Properties appear to have generated sufficient cash flow to make
10 payments under the Mezzanine Loan in the year and a half since the Receiver's
11 appointment. Quadrant has not accelerated the obligations under the Mezzanine Loan,
12 and is currently enjoined from doing so under the terms of the Receivership Order.
13
14

15 17. The Senior Borrowers and Mezzanine Borrowers remain solvent as (i) the
16 combined value of the Properties exceed the outstanding amount due under the Senior
17 Loan; and (ii) the value of the Mezzanine Borrowers' assets (*i.e.*, their ownership interests
18 in the Senior Borrowers) exceed the outstanding amount due under the Mezzanine Loan.
19 (Exhibit 1).
20

21 **The Priority Of Claims In This Proceeding**

22 18. The purpose of the Receivership is the orderly administration of the
23 Receivership Estate for the benefit of creditors, including to generate funds to distribute
24 to investors (the "Investors") who were defrauded by the Defendants. *See generally*
25 Receivership Order.
26
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1 19. Each of the Properties is owned by one of the Senior Borrowers. The
2 Senior Loan is secured by the Properties. None of the Investors invested in the Senior
3 Borrowers.
4

5 20. Each of the Senior Borrowers is owned by one of the Mezzanine
6 Borrowers. In fact, the Mezzanine Borrowers were specifically created as part of a
7 structured finance transaction for the purpose of providing Quadrant with a first priority
8 security interest in special purpose entities whose sole asset would be the Mezzanine
9 Borrowers' 100% membership interests in each of the Senior Borrowers. In other words,
10 the transaction was structured such that the Mezzanine Loan would be junior in priority
11 to the Senior Loan, but senior in priority to the holders of the ownership interests in the
12 Mezzanine Borrowers.
13
14

15 21. Thus, none of the Investors could have an interest in the Mezzanine
16 Borrower's membership interests in the Senior Borrowers, which is Quadrant's
17 collateral. The only entities in which Investors may have a direct or equitable interest
18 would be the membership interests in the Mezzanine Borrowers, not the Senior
19 Borrowers.
20

21 22. Thus, the proper priority of distribution of any claims relating to the sale of
22 the Properties is as follows:
23

Priority	Class Of Claims
First	Senior Lender as the mortgagee or beneficiary under deeds of trust on the Properties (<i>i.e.</i> , the secured creditor of the Senior Borrowers)
Second	Any outstanding payables and operating expenses of Senior Borrower (<i>i.e.</i> , the unsecured creditors of the Senior Borrowers)
Third	Quadrant as Mezzanine Lender under the Mezzanine Loan based upon its security interest in the membership interests in

	the Senior Borrowers (<i>i.e.</i> , the secured creditor of the Mezzanine Borrowers)
Fourth	Any outstanding payables and operating expenses of Mezzanine Borrower (<i>i.e.</i> , the general unsecured creditors of the Mezzanine Borrower)
Fifth	Receiver for the benefit of the Receivership Estate

23. Indeed, Quadrant’s priority is implicitly acknowledged in the Motion, where the Receiver asserts that Quadrant may be paid from proceeds from sales. (Motion at ¶ 20, fn 4) (“If the Receiver and Mezzanine Lender reach a resolution on the Mezzanine Lender’s allowed claim, the Receiver will seek Court approval for payment of such claim.”)

24. As such, before any sale proceeds can flow to the Receivership Estate, both the Senior Lender and Quadrant’s claims must be paid in full.

The Motion

25. On July 2, 2025, the Receiver filed the Motion which seeks, among other things, (i) approval of the sale of the Properties free and clear of all liens, claims and interests; (ii) approval of sale procedures governing auction sales of the Properties; (iii) authorization to use sale proceeds to defease and pay the Senior Loan; and (iv) the retention of a defeasance expert.

26. The Motion asserts that the proposed sale will generate sufficient proceeds to defease and pay the Senior Loan, to pay certain default interest and fees owed the Senior Lender, and with respect to any surplus, “**if the Receiver and Mezzanine Lender reach a resolution on the Mezzanine Lender’s allowed claim**, the Receiver will seek Court approval for payment of such claim.” Motion at ¶ 20, fn.4 (emphasis supplied).

1 27. But Quadrant has rights under the Intercreditor Agreement to, among other
2 things, acquire the Senior Loan and/or foreclose upon the equity interests of the Senior
3 Borrowers without affecting the Senior Loan. While the Receiver retains the right to
4 pursue an Alternate Transaction (as defined in the Motion), Motion at ¶ 4 fn.3, the Sale
5 Motion does not appear to explicitly state the benefit to the Receivership Estate and its
6 creditors that could be obtained by working collaboratively with Quadrant to maximize
7 such benefit, instead of pursuing a course of action that does not necessarily or
8 demonstrably benefit the entirety of the Receivership Estate.
9

10
11 28. Further, the Motion does not **require** the use of any of the Sale proceeds to
12 pay the Mezzanine Loan following the defeasance and payment of the Senior Loan,
13 which means that the Mezzanine Loan will continue to accrue interest at the default rate
14 to the detriment of the Receivership Estate and its creditors until the Mezzanine Loan is
15 paid in full.⁵ The Motion merely states that the Receiver **may** pay the Mezzanine Loan
16 **if an agreement can be reached** between the Receiver and the Mezzanine Lender on the
17 amount owed under the Mezzanine Loan. The Receiver is not even agreeing to pay the
18 undisputed portion of the Mezzanine Lender's claim. As a secured lender, Quadrant's
19 claims must be paid in full before any sale proceeds could flow to the Receivership Estate
20 or any benefit from the sales can be realized by the Receivership Estate and its creditors.
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22

23 29. While Quadrant has no objection to the sale of the Properties, such sale
24 must be done in a manner which maximizes the value of sale proceeds and recognizes
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⁵ Interestingly, the Receiver also asserts that the Mezzanine Lender is not entitled to default interest or a prepayment premium, though the Receiver, in the Motion has agreed to pay at least \$6 million in default interest to the Senior Lender. Compare Motion at ¶ 5 with Motion at ¶ 20.

1 Quadrant's secured priority position. Unfortunately, the Receiver's proposed sale
2 procedures fail to achieve this result because:

- 3
- 4 (i) The sale procedures do not require that Quadrant's claim under
5 the Mezzanine Loan be paid before *any* benefit can flow to the
6 Receivership Estate, and default interest will continue to
7 accrue to the detriment of the Receivership Estate and its
8 creditors until Quadrant's claim is paid in full; and
- 9 (ii) The reserve price (the "Reserve Price") for the Properties at the
10 Auction is so artificially low, and below market, that a sale at
11 the Reserve Price would not result in sufficient sale proceeds
12 for Quadrant to recover even the outstanding principal due
13 under the Mezzanine Loan, and there would be no funds
14 available for any distribution to the Receivership Estate and its
15 creditors at the Reserve Price.

16 **Limited Objection**

17 30. While Quadrant does not oppose the sale of the Properties, Quadrant
18 objects to the Motion because, among other things, the sale procedures, as proposed, do
19 not benefit the Receivership Estate, do not set a Reserve Price intended to benefit the
20 creditors of the Receivership Estate, and harm Quadrant's interests and the interests of
21 other creditors.

22 **A. The Sale Procedures Do Not Benefit the Receivership Estate And Its 23 Creditors And Harms Quadrant.**

24 31. As stated in the Motion, "a primary purpose of equity receiverships is to
25 promote orderly and efficient administration of the estate by the district court *for the*
26 *benefit of creditors.*" *S.E.C. v. Hardy*, 803 F.3d 1034, 1038 (9th Cir. 1986) (emphasis
27 added). The Receiver has a fiduciary duty to "protect and preserve the receivership
28 estate's assets 'for the benefit *of the persons ultimately entitled to it.*'" *S.E.C. v.*
Schooler, 2015 WL 1510949, at *3 (S.D. Cal. Mar. 4, 2015) (emphasis added).

1 32. Here, the Receiver asserts that “the Receivership Estate will save
2 approximately \$10 to \$11 million” through the proposed sale procedures, Motion at ¶ 5,
3 and that any surplus sale proceeds will be held “for the benefit of the respective
4 Receivership Borrower.” *Id.* at n.4. But the Receivership Estate is not the next entity
5 “ultimately entitled” to surplus sale proceeds—Quadrant is. And, the proposed Sale
6 order and procedures do not require the Receiver to pay Quadrant’s claim, which will
7 continue to accrue interest at the default rate to the detriment of the Receivership Estate
8 and its creditors.
9

10 33. The Receiver disputes some—but not all—of Quadrant’s claim.
11 Specifically, the Receiver disputes: (i) the default interest owed on the Mezzanine Loan;
12 (ii) Quadrant’s contractual right to a prepayment premium under the Mezzanine Loan;
13 and (iii) certain unspecified expenses. Motion at ¶ 20. The Receiver does not appear to
14 dispute the outstanding principal (\$9,925,756.96) and non-default interest
15 (approximately \$2,310,177.96) due under the Mezzanine Loan. The Motion articulates
16 no reason why payment of the undisputed portion of Quadrant’s claim from sale proceeds
17 should be delayed if there are sufficient sale proceeds. In the absence of such payment,
18 interest will continue to accrue post-closing on Quadrant’s claim under the Mezzanines
19 Loan, thereby leaving fewer potential funds available for the Receivership Estate or its
20 creditors. Accordingly, the proposed order granting the Motion and sale procedures
21 should be revised to require the Receiver to pay the Mezzanine Loan prior to the claims
22 of the Receivership Estate or any of its creditors.
23

24 34. The Sale Procedures should also contain a mechanism for a prompt
25 determination of the amount of the disputed portion of Quadrant’s claim under the
26

1 Mezzanine Loan post-closing in order to reduce the accrual of additional interest on the
2 Mezzanine Loan.

3
4 **B. The Reserve Price Does Not Benefit the Receivership Estate And Its**
5 **Creditors, And Harms Quadrant**

6 35. The Motion purports to set an aggregate Reserve Price of \$70 million for
7 the proposed sale and expressly reserves the right to cancel any sale should such price
8 not be reached. Motion at ¶ 16. The Motion includes no evidence establishing the
9 reasonableness of the proposed Reserve Price. And while the Motion states that the
10 proposed sale is anticipated to generate sufficient funds to “satisfy and defease the
11 [Senior] Lender,” Motion at n.4, and will save the Receivership Estate approximately \$11
12 million, Motion at ¶¶ 5, 19, it is unclear how this will be accomplished as the creditors
13 of the Receivership Estate would receive no distribution and realize no “savings” if a sale
14 occurs at the Reserve Price.
15

16
17 36. For example, the Motion asserts that only \$57 million is needed for
18 defeasance of the Senior Loan and an additional \$6 million to pay for default interest and
19 fees accrued under the Senior Loan before July 1, 2025. Motion at ¶ 5. The Motion
20 further asserts that the average brokerage commission due to Marcus & Millichap with
21 respect to the sale will be 3.5%, which would result in a commission of \$2,450,000 on a
22 \$70,000,000 sale.
23

24
25 37. At a \$70,000,000 Reserve Price, not including closing costs, there would
26 be only \$4,350,000 remaining after the defeasance and payment of the Senior Loan,
27 payment of agreed default interest on the Senior Loan, the payment of a 3.5% brokerage
28 commission to Marcus & Millichap, and a \$200,000 consulting fee to the Receiver’s

1 proposed defeasance expert. (\$70,000,000 - \$57,000,000 - \$6,000,000 - \$2,450,000 -
2 \$200,000 = 4,350,000). This amount would not even be sufficient to pay half of the
3 outstanding \$9,925,756.96 in principal due under the Mezzanine Loan. In other words,
4 at \$70,000,000, there would be no funds left for the Receivership Estate or its creditors.
5

6 38. The Properties are worth substantially more than \$70,000,000. By
7 artificially setting such a low reserve price, especially without any evidentiary support in
8 the Motion for such price, in the apparent hope of inducing a bidding fervor, the Receiver
9 is effectively gambling with Quadrant's money. The Receiver should be required to set
10 a reserve price that will cover at least Quadrant's claim under the Mezzanine Loan in
11 addition to the amounts to be paid on the Senior Loan, and to the broker and defeasance
12 expert.
13
14

15 CONCLUSION

16 39. Accordingly, for the reasons set forth above, the Motion should only be
17 granted to the extent it provides: (i) that the Reserve Price be fixed at amount sufficient
18 to pay the Mezzanine Loan in full; (ii) sale proceeds after payment of the Senior Loan
19 shall be used to pay the undisputed portion of Quadrant's claim at closing; and (iii) a
20 procedure for the creation of a reserve for, a prompt determination of the allowability of,
21 any disputed portion of Quadrant's claim.
22
23

24 Dated: July 16, 2025

Respectfully submitted,

26 **TALG, LTD.**

27 By: /s/ Cassidy Kitterman
28 Cassidy Kitterman, Esq.
Attorneys for Quadrant Mezz Fund LP

Exhibit 1

1 TALG LTD
2 Cassidy Kitterman
3 Ckitterman@Talg.Com
4 7150 East Camelback Rd., Suite 444
5 Scottsdale, AZ 85251
6 Phone: 949.502.7715
7 Fax: 949.266.8406

8 Attorneys For Quadrant Mezz Fund LP

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 JONATHAN M. LARMORE, *et al.*,

17 Defendants.
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Case No.: 2:23-cv-02470-DLR

**DECLARATION OF MATTHEW
WELSH IN SUPPORT OF
QUADRANT MEZZ FUND LP'S
LIMITED OPPOSITION TO THE
RECEIVER'S MOTION FOR
ORDERS (I) APPROVING (A) THE
ENGAGEMENT AND
COMPENSATION OF MARCUS
& MILLICHAP REAL ESTATE
INVESTMENT SERVICES AS
BROKER FOR THE SALE OF THE
PROPERTIES, (B) THE SALE AND
AUCTION PROCEDURES FOR THE
SALE OF THE PROPERTIES;
(II) APPROVING THE SALE OF
THE PROPERTIES AFTER
AUCTION, FREE AND CLEAR OF
ALL LIENS, CLAIMS,
ENCUMBRANCES AND
INTERESTS; AND (III) GRANTING
RELATED RELIEF**

1 I, Matthew Welsh, declare:

2 1. I am a managing director for Quadrant Finance Partners, LP, the parent
3 company of Quadrant Mezz Fund LP (“Quadrant”), a secured creditor of the Mezzanine
4 Borrowers.¹ I submit this declaration in support of Quadrant’s limited opposition (the
5 “Opposition”) to the *Receiver’s Motion For Orders (I) Approving (A) The Engagement And*
6 *Compensation Of Marcus & Millichap Real Estate Investment Services As Broker For The*
7 *Sale Of The Properties, (B) The Sale And Auction Procedures For The Sale Of The*
8 *Properties; (II) Approving The Sale Of The Properties After Auction, Free And Clear Of All*
9 *Liens, Claims, Encumbrances And Interests; And (III) Granting Related Relief.*

10 2. I am one of the directors at Quadrant responsible for the Mezzanine Loan (as
11 hereafter defined). I am also one of the custodians of the books, records and files of
12 Quadrant that pertain to the Mezzanine Loan, which is secured by 100% of the ownership
13 interests in the Senior Borrowers. I have personally worked on the books, records and files,
14 and as to following facts, I know them to be true of my own knowledge or I have gained
15 knowledge of them from the business records of Quadrant, which were made at the time of
16 the events recorded, and which are maintained in the ordinary course of Quadrant’s business
17 at or near the time of the acts, conditions or events to which they relate. Any document
18 created by Quadrant was prepared in the ordinary course of business by Quadrant by a
19 person who had personal knowledge of the event being recorded and had or has a business
20 duty to record accurately such event. The books, records and files of Quadrant also include
21 copies of the loan documents governing the Senior Loan. The information contained herein
22 is based upon either my personal knowledge or upon the books, records and files of
23 Quadrant.

24 **The Senior Loan**

25 3. On or about February 1, 2020, Grass River Real Estate Credit Partners Loan
26 Funding, LLC (“Grass River”) made a loan (the “Senior Loan”) in the original principal
27 amount of \$60,000,000 to the entities listed in the chart below (collectively, the “Senior”
28

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed them in the Opposition.

Borrowers”).² Each of the Senior Borrowers is a special purpose entity, owning only the real property and improvements (collectively, the “Properties”) described below.

Senior Borrower	Properties
AT Seven Hills Aurora Co II, LLC	18511, 18581, 18757 and 18883 E. Hampden Avenue, Aurora, Colorado 80013
AT ALTUS Cumberland CA II, LLC	2997 and 2999 Cumberland Blvd., Smyrna, Georgia 30339
AT Eastman GA II, LLC	970 Indian Drive, Eastman, Georgia 31023
ATA Lanier Fayetteville GA II, LLC	320 West Lanier, Fayetteville, Georgia 30214
AT PT Danville IL II, LLC	22 West Newell Road, Danville, Illinois 61834
AT New Lenox IL-Inline II, LLC	2021 East Laraway Road, New Lenox, Illinois 60451
AT Auburn Plaza IN II, LLC	506 N. Grandstaff Drive, Auburn, Indiana 46706
AT Plainfield Village II, LLC	160 Plainfield Village Drive, Plainfield, Indiana 46168
Arciterra Westgate Indianapolis IN II, LLC	5173 W. Washington Street, Indianapolis, Indiana 46241
AT HL Burlington IA II, LLC	3351 Agency Street, Burlington, Iowa 52601
AT Ville Platte LA II, LLC	925 E. LaSalle Street, Villa Platte, Louisiana 70586
AT Sweden NY II, LLC	1561 Nathaniel Poole Trail, Brockport, New York 14420
AT Mayodan NC II, LLC	131 Commerce Drive, Mayodan, North Carolina 27027
AT Longview TX II, LLC	711 Estes Drive, Longview, Texas 75602

4. Each of the Senior Borrowers granted a deed of trust or mortgage in such Properties to Grass River, along with an assignment of the leases and rents therefrom, to secure its obligations under the Senior Loan. The Senior Loan is serviced by 3650 REIT

² Each of the Senior Borrowers is a Receivership Entity, except for AT Plainfield Village II, LLC and Arciterra Westgate Indianapolis IN II, LLC (collectively, the “Senior Indiana Receivership Borrowers”), which are subject to a separate, receivership proceeding which is pending before the Indiana state court (the “Indiana State Court”).

Loan Servicing LLC, as special servicer (“3650,” and together with Grass River, the “Senior Lender”).

5. The non-default interest rate under the Senior Loan is 3.67% and default interest is an additional 5% over the non-default rate, capped at the maximum rate allowed by law. The Senior Lien is governed by New York law.

The Mezzanine Loan

6. Each of the Senior Borrowers is a single member Delaware limited liability company and is wholly owned by the entities listed in the chart below (hereafter, the “Mezzanine Borrowers”). The sole asset of each Mezzanine Borrower is its 100% ownership interest in the corresponding Senior Borrower:

Mezzanine Borrower	Senior Borrower
AT Seven Hills Aurora Member, LLC	AT Seven Hills Aurora Co II, LLC
AT ALTUS Cumberland Member, LLC	AT ALTUS Cumberland CA II, LLC
AT Eastman Member, LLC	AT Eastman GA II, LLC
ATA Lanier Fayetteville Member, LLC	ATA Lanier Fayetteville GA II, LLC
AT PT Danville Member, LLC	AT PT Danville IL II, LLC
AT New Lenox-IL Member, LLC	AT New Lenox IL-Inline II, LLC
AT Auburn Plaza Member, LLC	AT Auburn Plaza IN II, LLC
AT Plainfield Village Member, LLC	AT Plainfield Village II, LLC
Arciterra Westgate Indianapolis Member, LLC	Arciterra Westgate Indianapolis IN II, LLC
AT HL Burlington Member, LLC	AT HL Burlington IA II, LLC
AT Ville Platte LA Member, LLC	AT Ville Platte LA II, LLC
AT Sweden Member, LLC	AT Sweden NY II, LLC
AT Mayodan Member, LLC	AT Mayodan NC II, LLC
AT Longview Member, LLC	AT Longview TX II, LLC

7. On or about February 1, 2020, Quadrant made a mezzanine loan (the “Mezzanine Loan”) in the original principal amount of \$10,000,000 to the Mezzanine

Borrowers.³ The Mezzanine Borrowers' obligations under the Mezzanine Loan are secured by security interests (the "Mezzanine Security Interests") in the Mezzanine Borrowers' 100% ownership interest in the Senior Borrowers. The Mezzanine Security Interests are duly perfected by both: (i) Quadrant's physical possession of the membership certificates evidencing the Mezzanine Borrowers' 100% ownership interest in each of the Senior Borrowers; and (ii) a UCC financing statement filed with the Delaware Secretary of State. A copy of the Mezzanine Loan Agreement is annexed to the Motion as Exhibit 2; a copy of the Promissory Note – Mezzanine Loan, is annexed to the Motion as Exhibit 3; a copy of the Mezzanine Pledge and Security Agreement, is annexed to the Motion as Exhibit 4; a copy of the UCC financing statement filed with the Delaware Secretary of State, is annexed to the Motion as Exhibit 5.

8. The non-default interest rate under the Mezzanine Loan is 12%. The default interest rate is an additional 5% over the non-default rate, as capped as the maximum rate allowed by law. The Mezzanine Loan is governed by New York law. Exhibit 2 at §§ 2.5, 17.2 and Exhibit A thereto..

9. The outstanding balance under the Mezzanine Loan as of October 4, 2025 (not including legal fees and expenses incurred after June 30, 2025) will be \$16,499,196.82, consisting of: (i) \$9,925,756.96 in principal, (ii) \$2,310,177.96 in non-default interest; (iii) \$1,072,881.56 in default interest; (iv) \$58,357.68 in legal fees and expenses; (v) \$2,537.62 in site visit expenses; (vi) \$3,129,235.04 in prepayment premium; and (vii) a \$250 in pay-off quote expense.⁴

³ Each of the Mezzanine Borrowers is a Receivership Entity, except for AT Plainfield Village Member, LLC, and ArciTerra Westgate Indianapolis Member, LLC, (collectively, and together with the Senior Indiana Receivership Borrowers, the "Indiana Receivership Entities") which are subject to a separate receivership in Indiana State Court.

⁴ The pay-off is dated as of October 4, 2025 because the Motion contemplates auctions in September with closings in October. This pay-off amount does not take into account \$49,016.82, being held in reserves by Quadrant, which would be applied upon a closing of any sale.

1 **The Intercreditor Agreement Between The Senior Lender And Quadrant**

2 10. At the time of their respective entry into the Senior Loan and Mezzanine Loan,
3 the Senior Lender and Quadrant entered into an intercreditor agreement, dated as of
4 February 10, 2020 (the “Intercreditor Agreement”). A copy of the Intercreditor Agreement
5 is annexed to the Motion as Exhibit 6.

6 11. Section 6 of the Intercreditor Agreement governs the parties’ rights in the
7 event that Quadrant forecloses under the Mezzanine Loan on its security interest in the
8 membership interests in the Senior Borrowers. Specifically, § 6 of the Intercreditor
9 Agreement provides that in the event Quadrant forecloses on the Mezzanine Loan and takes
10 title to the ownership interests in the Senior Borrowers, then “the terms, conditions and
11 provisions of the Senior Loan Documents for the balance of the term thereof, which shall
12 not be accelerated by Senior Lender solely due to such acquisition shall remain in full force
13 and effect.”

14 12. Section 14 of the Intercreditor Agreement provides Quadrant the right to
15 purchase the Senior Loan upon certain “Purchase Option Events,” including the
16 appointment of 3650 as special servicer due to continuing events of default under the Senior
17 Loan. The Senior Lender has provided Quadrant with a notice that such Purchase Option
18 Events have occurred. As such, Quadrant also currently has the right to purchase the Senior
19 Loan, which does not appear to be contemplated by the Sale Motion or proposed sale
20 procedures.

21 **The Status Of The Senior Loan And The Mezzanine Loan**

22 13. A non-monetary event of default occurred under both the Senior Loan and the
23 Mezzanine Loan when: (i) the Indiana State Court appointed a receiver for the Indiana
24 Receivership Entities on August 17, 2023; and (ii) this Court entered the Receivership
25 Order. Such events of default are continuing.

26 14. According to the Motion, no payment defaults on the Senior existed at the
27 time of the Receiver’s appointment, (Motion at ¶ 12) and upon information and belief, the
28 Receiver has made interest-only payments on the Senior Loan since his appointment,

1 notwithstanding that the Properties appear to have generated sufficient cash flow to make
2 all required interest and principal payments under the Senior Loan. The Senior Lender has
3 not accelerated the obligations under the Senior Loan, and it is enjoined from doing so under
4 the terms of the Receivership Order.

5 15. As of the date of the commencement of this action, the Mezzanine Borrowers
6 were current on their payment obligations under the Mezzanine Loan. Since his
7 appointment, the Receiver has not made any payments to the Mezzanine Lender despite the
8 fact that the Properties appear to have generated sufficient cash flow to make payments
9 under the Mezzanine Loan in the year and a half since the Receiver's appointment. Quadrant
10 has not accelerated the obligations under the Mezzanine Loan, and is currently enjoined
11 from doing so under the terms of the Receivership Order.

12 16. The Senior Borrowers and Mezzanine Borrowers remain solvent as (i) the
13 combined value of the Properties exceed the outstanding amount due under the Senior Loan;
14 and (ii) the value of the Mezzanine Borrowers' assets (*i.e.*, their ownership interests in the
15 Senior Borrowers) exceed the outstanding amount due under the Mezzanine Loan. I base
16 this statement upon Quadrant's books and records and the fact that Quadrant and its
17 principals have over 150 years of combined experience in direct real estate ownership,
18 investment banking, lending, development and structured real estate financing. I,
19 personally, have approximately 8 years' experience in such areas. Based on our review of
20 prior sales conducted by the Receiver under this Receivership, current market conditions,
21 investor demand for the supply constrained retail asset class and the Properties' financial
22 information, the Properties are worth substantially more than \$70,000,000.

23 **The Priority Of Claims In This Proceeding**

24 17. Each of the Properties is owned by one of the Senior Borrowers. The Senior
25 Loan is secured by the Properties. None of the Investors invested in the Senior Borrowers.

26 18. Each of the Senior Borrowers is owned by one of the Mezzanine Borrowers.
27 In fact, the Mezzanine Borrowers were specifically created as part of a structured finance
28 transaction for the purpose of providing Quadrant with a first priority security interest in

special purpose entities whose sole asset would be the Mezzanine Borrowers' 100% membership interests in each of the Senior Borrowers. In other words, the transaction was structured such that the Mezzanine Loan would be junior in priority to the Senior Loan, but senior in priority to the holders of the ownership interests in the Mezzanine Borrowers.

19. Thus, none of the Investors could have an interest in the Mezzanine Borrower's membership interests in the Senior Borrowers, which is Quadrant's collateral. The only entities in which Investors may have a direct or equitable interest would be the membership interests in the Mezzanine Borrowers, not the Senior Borrowers.

20. Thus, the proper priority of distribution of any claims relating to the sale of the Properties is as follows:

Priority	Class Of Claims
First	Senior Lender as the mortgagee or beneficiary under deeds of trust on the Properties (<i>i.e.</i> , the secured creditor of the Senior Borrowers)
Second	Any outstanding payables and operating expenses of Senior Borrower (<i>i.e.</i> , the unsecured creditors of the Senior Borrowers)
Third	Quadrant as Mezzanine Lender under the Mezzanine Loan based upon its security interest in the membership interests in the Senior Borrowers (<i>i.e.</i> , the secured creditor of the Mezzanine Borrowers)
Fourth	Any outstanding payables and operating expenses of Mezzanine Borrower (<i>i.e.</i> , the general unsecured creditors of the Mezzanine Borrower)
Fifth	Receiver for the benefit of the Receivership Estate

Limited Opposition to the Motion

21. While Quadrant has no objection to the sale of the Properties, such sale must be done in a manner which maximizes the value of sale proceeds and recognizes Quadrant's secured priority position. Unfortunately, the Receiver's proposed sale procedures fail to achieve this result because:

- 1 (i) The sale procedures do not require that Quadrant’s claim under
 2 the Mezzanine Loan be paid before *any* benefit can flow to the
 3 Receivership Estate, and default interest will continue to accrue
 4 to the detriment of the Receivership Estate and its creditors until
 5 Quadrant’s claim is paid in full; and
- 6 (ii) The reserve price (the “Reserve Price”) for the Properties at the
 7 Auction is so artificially low, and below market, that a sale at the
 8 Reserve Price would not result in sufficient sale proceeds for
 9 Quadrant to recover even the outstanding principal due under the
 10 Mezzanine Loan, and there would be no funds available for any
 11 distribution to the Receivership Estate and its creditors at the
 12 Reserve Price.

13 **A. The Sale Procedures Do Not Benefit the Receivership Estate Or Its Creditors**
 14 **And Harms Quadrant.**

15 22. Here, the Receiver asserts that “the Receivership Estate will save
 16 approximately \$10 to \$11 million” through the proposed sale procedures, Motion at ¶ 5, and
 17 that any surplus sale proceeds will be held “for the benefit of the respective Receivership
 18 Borrower.” *Id.* at n.4. But the Receivership Estate is not the next entity “ultimately entitled”
 19 to surplus sale proceeds—Quadrant is. And, the proposed Sale order and procedures do not
 20 require the Receiver to pay Quadrant’s claim, which will continue to accrue interest at the
 21 default rate to the detriment of the Receivership Estate and its creditors.

22 23. The Receiver disputes some—but not all—of Quadrant’s claim. Specifically,
 23 the Receiver disputes: (i) the default interest owed on the Mezzanine Loan; (ii) Quadrant’s
 24 contractual right to a prepayment premium under the Mezzanine Loan; and (iii) certain
 25 unspecified expenses. Motion at ¶ 20. The Receiver does not appear to dispute the
 26 outstanding principal (\$9,925,756.96) and non-default interest (approximately
 27 \$2,310,177.96) due under the Mezzanine Loan. The Motion articulates no reason why
 28 payment of the undisputed portion of Quadrant’s claim from sale proceeds should be
 delayed if there are sufficient sale proceeds. In the absence of such payment, interest will
 continue to accrue post-closing on Quadrant’s claim under the Mezzanines Loan, thereby
 leaving fewer potential funds available for the Receivership Estate or its creditors.

1 Accordingly, the proposed order granting the Motion and sale procedures should be revised
2 to require the Receiver to pay the Mezzanine Loan prior to the claims of the Receivership
3 Estate or any of its creditors.

4 24. The Sale Procedures should also contain a mechanism for a prompt
5 determination of the amount of the disputed portion of Quadrant's claim under the
6 Mezzanine Loan post-closing in order to reduce the accrual of additional interest on the
7 Mezzanine Loan.

8 **B. The Reserve Price Does Not Benefit the Receivership Estate Or Its Creditors**
9 **And Harms Quadrant**

10 25. The Motion purports to set an aggregate Reserve Price of \$70 million for the
11 proposed sale and expressly reserves the right to cancel any sale should such price not be
12 reached. Motion at ¶ 16. The Motion includes no evidence establishing the reasonableness
13 of the proposed Reserve Price. And while the Motion states that the proposed sale is
14 anticipated to generate sufficient funds to "satisfy and defease the [Senior] Lender," Motion
15 at n.4, and will save the Receivership Estate approximately \$11 million, Motion at ¶¶ 5, 19,
16 it is unclear how this will be accomplished as the creditors of the Receivership Estate would
17 receive no distribution and realize no "savings" if a sale occurs at the Reserve Price.

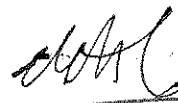
18 26. For example, the Motion asserts that only \$57 million is needed for
19 defeasance of the Senior Loan and an additional \$6 million to pay for default interest and
20 fees accrued under the Senior Loan before July 1, 2025. Motion at ¶ 5. The Motion further
21 asserts that the average brokerage commission due to Marcus & Millichap with respect to
22 the sale will be 3.5%, which would result in a commission of \$2,450,000 on a \$70,000,000
23 sale.

24 27. At a \$70,000,000 Reserve Price, not including closing costs, there would be
25 only \$4,350,000 remaining after the defeasance and payment of the Senior Loan, payment
26 of agreed default interest on the Senior Loan, the payment of a 3.5% brokerage commission
27 to Marcus & Millichap, and a \$200,000 consulting fee to the Receiver's proposed
28 defeasance expert. $(\$70,000,000 - \$57,000,000 - \$6,000,000 - \$2,450,000 - \$200,000 =$

1 4,350,000). This amount would not even be sufficient to pay half of the outstanding
2 \$9,925,756.96 in principal due under the Mezzanine Loan. In other words, at \$70,000,000,
3 there would be no funds left for the Receivership Estate or its creditors,.

4 28. The Properties are worth substantially more than \$70,000,000. By artificially
5 setting such a low reserve price, especially without any evidentiary support in the Motion
6 for such price, in the apparent hope of inducing a bidding fervor, the Receiver is effectively
7 gambling with Quadrant's money. The Receiver should be required to set a reserve price
8 that will cover at least Quadrant's claim under the Mezzanine Loan in addition to the
9 amounts to be paid on the Senior Loan, and to the broker and defeasance expert.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed on
11 July 16, 2025.

12 

13 _____
14 Matthew Welsh
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Exhibit 2

MEZZANINE LOAN AGREEMENT

Dated as of February 10, 2020

Between

EACH OF THE ENTITIES SET FORTH ON SCHEDULE III ATTACHED HERETO,
as Borrower

and

QUADRANT MEZZ FUND, LP,
as Lender

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MEZZANINE LOAN AGREEMENT

THIS MEZZANINE LOAN AGREEMENT, dated as of February 10, 2020 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **QUADRANT MEZZ FUND, LP**, a Delaware limited partnership, having an address at 8333 Douglas Avenue, Suite 1350, Dallas, Texas 75225 (together with its successors and/or assigns, “**Lender**”) and **EACH OF THE ENTITIES SET FORTH ON SCHEDULE III ATTACHED HERETO**, each a Delaware limited liability company, and each have having an address at 2701 E. Camelback Road, Suite 150, Phoenix, Arizona 85016 (together with their respective successors and/or assigns, individually or collectively, as the context may require, “**Borrower**”).

RECITALS:

WHEREAS, Borrower desires to obtain the Loan (defined below) from Lender pursuant to this Agreement (the “**Loan**”); and

WHEREAS, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined), and based upon the granting of a secured interest in the Collateral (as defined herein), together with the representations, warranties, covenants and undertakings of Borrower herein and therein contained, Lender is willing to make the Loan to Borrower on the terms and conditions set forth herein and therein.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, capitalized terms throughout this Agreement have the meanings given to them in the attached Exhibit A and Exhibit B.

Section 1.2 Principles of Construction.

(a) All references to sections, exhibits and schedules are to sections, exhibits and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

(b) The parties hereto acknowledge that the defined term “Borrower” has been defined to collectively include each individual Borrower. It is the intent of the parties hereto in determining whether (a) a breach of a representation or a covenant has occurred, (b) there has occurred a Default or Event of Default, or (c) an event has occurred which would create recourse obligations under Section 13.1 of this Agreement, that any such breach, occurrence or event with respect to any individual Borrower shall be deemed to be such a breach, occurrence or event with respect to all Borrowers and that all individual Borrowers need not have been involved with such breach, occurrence or event in order for the same to be deemed such a breach, occurrence or event with respect to every individual Borrower. In addition, it is the intent of the parties hereto that the conditions, requirements and limitations set forth in the definitions of “Permitted Equity Transfer” and “Permitted Property Transfer” with respect to Borrower shall apply equally as to each individual Borrower (other than in those instances where a specific Borrower entity is expressly referenced), and that each individual Borrower shall be required to satisfy any conditions contained therein with respect to Borrower.

(c) All references to the Senior Loan Agreement or any other Senior Loan Document shall mean the Senior Loan Agreement or such other Senior Loan Document as in effect on the date hereof, as each of the same may hereafter be amended, restated, replaced, supplemented or otherwise modified, but only to the extent that Lender has consented to the foregoing pursuant to this Agreement. With respect to terms defined by cross-reference to the Senior Loan Documents, such defined terms shall have the definitions set forth in the Senior Loan Documents as of the date hereof, and no modifications to the Senior Loan Documents shall have the effect of changing such definitions for the purposes of this Agreement unless Lender expressly agrees that such definitions as used in this Agreement have been revised. Notwithstanding anything stated herein to the contrary, any provisions in this Agreement cross-referencing provisions of the Senior Loan Documents shall be effective notwithstanding the termination of the Senior Loan Documents by payment in full of the Senior Loan or otherwise.

(d) For the purposes of this Agreement and the other Loan Documents, the phrases “knowledge of”, “awareness of” and words of similar import with respect to Borrower shall be deemed to include the knowledge or awareness of Owner.

(e) The words “Borrower shall cause”, or “Borrower shall not permit” (or words of similar meaning) shall mean “Borrower shall cause Owner” or “Borrower shall not permit Owner”, as the case may be, to so act or not to so act, as applicable.

(f) Borrower and Lender hereby acknowledge and agree that, as to any clauses or provisions contained in this Agreement or any of the other Loan Documents to the effect that (i) Borrower represents or warrants on behalf of, or covenants on behalf of Owner, (ii) Borrower shall cause Owner to act or refrain from acting, to comply with, to permit, to perform, to pay, to furnish, to cure, to remove, to observe, to deliver, to suffer, to initiate, to provide, to furnish in any manner, or (iii) Borrower shall or Borrower shall cause to occur or to not occur, or otherwise be obligated in any manner with respect to, any matters pertaining to the Owner or the Property, such clause or provision is intended to mean, and shall be construed as meaning, that Borrower has undertaken to act and is obligated to act only in Borrower’s capacity as the sole member of Owner and not directly with respect to the Owner in any other manner which would violate any of the covenants contained in Article 5 of this Agreement, any other similar covenants contained

in Borrower's or Owner's organizational documents, or any other similar covenants contained in the Senior Loan Documents.

ARTICLE II

GENERAL TERMS

Section 2.1 The Loan.

Subject to and upon the terms and conditions set forth herein, Lender agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

Section 2.2 Disbursement to Borrower.

Borrower may request and receive only one borrowing of the Loan and any amount borrowed and repaid may not be re-borrowed.

Section 2.3 The Note and the other Loan Documents.

The Loan shall be evidenced by the Note and shall be repaid in accordance with the terms of this Agreement and the Note.

Section 2.4 Use of Proceeds.

Borrower shall use the proceeds of the Loan to (i) make a capital contribution to Owner in order to cause Owner to use such amounts for the purposes set forth in the Senior Loan Agreement, (ii) pay costs and expenses incurred in connection with the closing of the Loan, and (iii) to the extent any proceeds remain after satisfying clauses (i) through (ii) above, distribute the balance of the proceeds, if any, to Borrower.

Section 2.5 Interest Rate.

(a) Generally. Interest on the outstanding principal balance of the Loan shall accrue from the Closing Date up to but excluding the Maturity Date at the Interest Rate.

(b) Default Rate. In the event that, and for so long as, any Event of Default has occurred and remains continuing, the outstanding principal balance of the Loan and, to the extent permitted by Applicable Law, overdue interest in respect of the Loan, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

(c) Interest Calculation. Interest on the outstanding principal balance of the Loan shall accrue at the Interest Rate calculated on an Actual/360 Basis.

(d) Usury Savings. This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If by the terms of this Agreement or the

other the Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use or forbearance of the sums due under the Loan, shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.6 Loan Payments.

(a) Payment Before Maturity. Borrower shall make a payment to Lender of interest only on the Closing Date for the period from the Closing Date through and including March 4, 2020. Borrower shall make a payment to Lender of principal (if applicable) and interest in the amount of the Monthly Debt Service Payment Amount on the Monthly Payment Date occurring in April, 2020 and on each Monthly Payment Date thereafter to and including the Maturity Date. Each payment shall be applied first to accrued and unpaid interest and the balance, if any, to principal. The Monthly Debt Service Payment Amount required hereunder (where such Monthly Debt Service Payment Amount includes both principal and interest) is based upon a thirty (30) year amortization schedule. The Monthly Debt Service Payment Amount and any deposits required to be made with respect to the Mezzanine Loan Reserve Funds due on the first Monthly Payment Date shall be collected by Lender on the Closing Date and shall be applied to the Debt Service and/or to make initial deposits of the Reserve Funds, as applicable, on the first Monthly Payment Date. Borrower shall also cause Owner to pay to Senior Lender all amounts required in respect of Reserve Funds as set forth in the Senior Loan Agreement.

(b) Payment on Maturity. On the Maturity Date, Borrower shall pay to Lender the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due under the Loan Documents. Prior to Securitization of the Loan, Lender shall have the one-time right, in its sole discretion, upon not less than ten (10) days prior written notice to Borrower, to extend the Maturity Date to a date not more than four (4) calendar months beyond the stated Maturity Date set forth in this Agreement; provided, however, that if Lender shall have elected to extend the Maturity Date as aforesaid, the Open Period Start Date shall be adjusted accordingly to commence at a later date to correspond to the date that is three (3) months prior to the extended Maturity Date.

(c) Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower when due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by Applicable Law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Security Instrument and the other Loan Documents.

(d) Method and Place of Payment.

(i) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender no later than 2:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

(ii) If any payment to be made by Borrower is due on a day which is not a Business Day, the due date thereof shall be deemed to be the immediately preceding Business Day.

(iii) All payments required to be made by Borrower shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and irrespective of any defense thereto.

(iv) Lender shall have the right from time to time, in its sole discretion, upon not less than thirty (30) days' prior written notice to Borrower, to change the Monthly Payment Date to a different calendar day each month which is not more than four (4) days earlier nor more than five (5) days later than the fifth (5th) day of each calendar month; provided, however, that if Lender shall have elected to change the Monthly Payment Date as aforesaid, Lender shall have the option, but not the obligation, to adjust the Interest Accrual Period correspondingly.

Section 2.7 Prepayments.

(a) Except as otherwise expressly permitted herein, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. On and after the Open Period Start Date, Borrower may, provided no Event of Default has occurred and is continuing, at its option and upon thirty (30) days' prior notice to Lender (or such shorter period of time as may be permitted by Lender in its sole discretion), prepay the Debt in whole on any date without payment of the Yield Maintenance Premium. Any prepayment received by Lender on a date other than a Monthly Payment Date shall include any applicable Interest Shortfall. It shall be a condition to a prepayment made pursuant to this Section 2.7(a) that the "Debt" under and as defined in the Senior Loan Documents shall be simultaneously prepaid and satisfied in full.

(b) Mandatory Prepayments.

(i) In the event of any Liquidation Event, Borrower shall immediately cause the related Net Liquidation Proceeds After Debt Service to be deposited with Lender, which proceeds shall then be applied by Lender on the next Business Day towards the amount necessary to fully repay the Loan including all interest accrued to the date of prepayment and any other sums then due and payable by Borrower to Lender. Any amounts of Net Liquidation Proceeds After Debt Service in excess of the Debt shall be paid to Borrower. Borrower shall notify Lender of any Liquidation Event not later than one (1) Business Day following the first date on which Borrower or Owner has knowledge of such event. Borrower shall be deemed to have knowledge of (A) a sale

(other than a foreclosure sale) of the Property on the date on which a contract of sale for such sale is entered into, and a foreclosure sale, on the date notice of such foreclosure sale is given, and (B) a refinancing of the Property, on the date on which a commitment for such refinancing has been entered into by or on behalf of Borrower or Owner. The provisions of this Section 2.7 shall not be construed to contravene in any manner the restrictions and other provisions regarding refinancing of the Senior Loan or Transfer of the Property set forth in this Agreement and the other Loan Documents.

(ii) In addition, in the event that the Senior Loan is defeased in whole or in part in accordance with the terms of the Senior Loan Documents, Borrower shall simultaneously prepay the Loan in whole or in part, respectively, in accordance with Section 2.8 below.

(c) Prepayments After Default. If concurrently with or after an Event of Default, payment of all or any part of the principal of the Loan is tendered by Borrower, a purchaser at foreclosure or any other Person, such tender shall be deemed an attempt to circumvent the prohibition against prepayment prior to the Open Period Start Date as set forth herein and Borrower, such purchaser at foreclosure or other Person shall pay (i) the Yield Maintenance Premium and (ii) Interest Shortfall, in addition to the outstanding principal balance, all accrued and unpaid interest and other amounts payable under the Loan Documents. Borrower acknowledges that (i) a prepayment will cause damage to Lender; (ii) the Yield Maintenance Premium is intended to compensate Lender for the loss of its investment and the expense incurred and time and effort associated with making the Loan, which will not be fully repaid if the Loan is prepaid; (iii) it will be extremely difficult and impractical to ascertain the extent of Lender's damages caused by a prepayment after an acceleration or any other prepayment not permitted by the Loan Documents; and (iv) the Yield Maintenance Premium represents Lender's and Borrower's reasonable estimate of Lender's damages from the prepayment and is not a penalty.

(d) Release of Lien. Except as expressly set forth in this Article II (including, without limitation, Section 2.8 and 2.9 hereof with respect to a Defeasance Event), no repayment, prepayment or defeasance of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release of the lien of the Security Instrument; provided, however, for the purposes of clarification only, Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and conditions thereof, release the lien of any Security Instrument.

Section 2.8 Defeasance of Senior Loan.

(a) Provided no Event of Default has occurred and is continuing, Borrower shall have the right at any time after the Defeasance Lockout Release Date and prior to the Open Period Start Date to voluntarily (x) in connection with a defeasance of the entire Senior Loan (hereinafter, a **"Total Defeasance Event"**), prepay the Loan in full or (y) in connection with the sale or transfer of a Release Property subject to and in accordance with the terms of Section 2.9 hereof and the partial defeasance of the Senior Loan (a **"Partial Defeasance Event"**), prepay a

portion of the Loan equal to the Release Amount, in each case, subject to the satisfaction of the following conditions precedent:

(i) Borrower shall provide Lender not less than sixty (60) days' notice (or such shorter period of time if permitted by Lender in its sole discretion) but not more than ninety (90) days' notice specifying (1) the date (the "**Defeasance Date**") on which the Defeasance Event is to occur with respect to the Senior Loan, (2) the principal amount of the Loan to be prepaid (which, in the case of a Total Defeasance Event, shall be the entire principal amount of the Loan and, in the case of a Partial Defeasance Event, shall be the applicable Release Amount), and (3) in the case of a Partial Defeasance Event, the Release Property to be released under the Senior Loan Documents and the Release Collateral;

(ii) Borrower shall pay to Lender (A) all payments of principal and interest due and payable on the Loan to and including the Defeasance Date (provided that if such Defeasance Date is not a Monthly Payment Date, Borrower shall also pay to Lender all payments of principal and interest due on the Loan to and including the next occurring Monthly Payment Date); (B) all other sums, if any, then due and payable under the Loan Documents through and including the Defeasance Date (or, if the Defeasance Date is not a Monthly Payment Date, the next occurring Monthly Payment Date); (C) all escrow, closing, recording, legal, appraisal, Rating Agency and other fees, costs and expenses paid or incurred by Lender or its agents in connection with the Defeasance Event, and the release of the lien of any Security Instrument on the Release Collateral; and (D) any revenue, documentary stamp, intangible or other taxes, charges or fees due in connection with the transfer or assumption of the Note and/or the Defeasance Event;

(iii) intentionally omitted;

(iv) Borrower shall otherwise comply with the provisions of Section 2.8(d) and, if applicable, Section 2.9, hereof;

(v) intentionally omitted;

(vi) intentionally omitted;

(vii) intentionally omitted;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.8, and if applicable, Section 2.9 hereof, have been satisfied;

(ix) intentionally omitted;

(x) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request;

(xi) Borrower shall pay all reasonable, out-of-pocket costs and expenses of Lender incurred in connection with the Defeasance Event, including, without limitation,

Lender's reasonable attorneys' fees and expenses actually incurred by Lender and Rating Agency fees and expenses;

(xii) Borrower shall have simultaneously caused Owner to complete the applicable Defeasance Event in accordance with the Senior Loan Documents.

(b) If Borrower has elected to prepay the entire (or a portion of, in the case of a Partial Defeasance Event) Note and the requirements of this Section 2.8 have been satisfied, the Collateral (or the Release Collateral in the case of a Partial Defeasance Event) shall be released from the lien of the Security Instrument by way of a UCC-3 termination statement. Borrower shall pay all costs, taxes and expenses associated with the release of the lien of any Security Instrument, including Lender's reasonable attorneys' fees.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) Intentionally omitted.

(f) Borrower shall not permit Owner to defease the Senior Loan in whole or in part unless Borrower concurrently prepays the Loan in whole or in part, as applicable, in accordance with this Section 2.8. A defeasance of the Senior Loan in violation of this Section shall be a Prohibited Transfer in violation of the terms of this Agreement.

Section 2.9 Additional Requirements Regarding Partial Defeasance Event.

On any Monthly Payment Date that is (x) after the Defeasance Lockout Release Date, and (y) before the Open Period Start Date, Borrower may obtain the release of the Release Collateral upon a bona fide third-party sale of the Individual Property owned by the related Owner; provided each of the following conditions are satisfied:

(a) Both immediately before such sale and immediately thereafter, no Event of Default or Cash Trap Event Period shall be continuing;

(b) The sale of such Individual Property is pursuant to an arm's-length agreement to a third party not Affiliated with Borrower, Owner or Guarantor, and in which no Borrower and no Affiliate of Borrower, Owner and/or Guarantor has any beneficial interest;

(c) Borrower shall (i) prepay an amount of principal equal to the Release Amount for the Release Collateral in question and (ii) satisfy all of the requirements of Section 2.8 hereof with respect to such Partial Defeasance Event;

(d) After giving effect to such Partial Defeasance Event, each Borrower shall remain a Single Purpose Entity and each Owner shall remain a Single Purpose Entity;

(e) Borrower shall have given Lender at least sixty (60) days' prior written notice of such sale, accompanied by a copy of the applicable contract of sale and all related documents

and drafts of any applicable release documents (which such release documents shall be subject to Lender's approval, such approval not to be unreasonably withheld or delayed);

(f) Borrower shall have delivered to Lender a copy of the final closing settlement statement for such sale at least two (2) Business Days prior to the closing of such sale;

(g) Lender shall have received a copy of a deed conveying all of the applicable Owner's right, title and interest in and to the Release Property and a letter from such Owner countersigned by a title insurance company acknowledging receipt of such deed and agreeing to record such deed in the real estate records of the appropriate recording office in which the Release Property is located;

(h) intentionally omitted;

(i) Borrower shall have paid to Lender all costs and expenses (including reasonable attorneys' fees) incurred by Lender in connection with such sale and the release of such Release Collateral from the lien of the Loan Documents;

(j) no partial prepayment granted by Lender shall, in any way, impair or affect the Lien or priority of any of the Security Instruments relating to the Remaining Collateral;

(k) the representations and warranties made by Borrower and Guarantor in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of such release (and after giving effect to such release), except to the extent such representations and warranties apply to any Release Collateral after the date of such release;

(l) Borrower and Guarantor shall execute and deliver such documents as Lender may reasonably request to confirm the continued validity of the Loan Documents and the liens thereof with respect to each remaining Borrower and the Remaining Collateral;

(m) intentionally omitted;

(n) after giving effect to such release and Partial Defeasance Event, the Debt Yield for the Remaining Property shall be no less than the greater of (i) the Debt Yield immediately preceding such release and (ii) 9.25%;

(o) after giving effect to such release and Partial Defeasance Event, the Loan to Value Ratio for all of the Remaining Property shall be no more than the lesser of (i) the Loan to Value Ratio immediately preceding such release (inclusive of the Individual Property subject to the release under the Senior Loan Documents) and (ii) 70.0%; and

(p) Borrower shall have delivered evidence, in form and substance reasonably satisfactory to Lender, that all conditions precedent to the partial defeasance of the Senior Loan and the release pursuant to the Senior Loan Agreement shall be satisfied by Owner contemporaneously with Borrower's satisfaction of the conditions set forth in this Section 2.9 with respect to such release.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as of the Closing Date that:

Section 3.1 Legal Status and Authority.

Each Borrower and each Owner (a) is duly organized, validly existing and in good standing under the laws of its state of formation; (b) is duly qualified to transact business and is in good standing in the State in which the Individual Collateral or the Individual Property owned by such Borrower or Owner, as applicable, is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Collateral and the Property respectively. Each Borrower has full power, authority and legal right to pledge, assign, warrant, transfer and convey the Collateral owned by such Borrower, pursuant to the terms hereof and to keep and observe all of the terms of the Loan Documents on Borrower's part to be performed. Each Borrower and each Owner is a Single Purpose Entity. Owner has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of the Senior Loan Documents on Owner's part to be performed.

Section 3.2 Validity of Documents.

This Agreement and the other Loan Documents have been duly authorized, executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any asset or property of Borrower or Owner pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower or Owner is a party or by which any of Borrower's or Owner's assets or properties is subject, nor will such action result in any violation of the provisions of any legal requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's or Owner's assets or properties. Neither Borrower nor Owner is in default under any other agreement or instrument to which Borrower or Owner is a party that would constitute an Event of Default under the Loan Documents. Each consent, approval, authorization, order, registration or qualification of or with any court or any other Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement and the other Loan Documents has been obtained and is in full force and effect.

Section 3.3 Litigation.

There is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened or contemplated against or affecting any Borrower, Owner, Sponsor or Guarantor or against or affecting the Property or the Collateral that has not been disclosed to Lender by Borrower in writing in connection with the closing of the Loan, is not fully covered by insurance or, if determined adversely to any Borrower, Owner or Guarantor, would have a Material Adverse Effect.

Section 3.4 Agreements.

Neither Borrower nor Owner is a party to any agreement or instrument or subject to any restriction which would have a Material Adverse Effect. Borrower or Owner is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which Borrower, Owner, the Property or the Collateral is bound. Borrower or Owner has no material financial obligation under any agreement or instrument to which Borrower or Owner is a party or by which Borrower, Owner, the Property or the Collateral is otherwise bound, other than (a) Owner's obligations incurred in the ordinary course of the operation of the Property and (b) Borrower's obligations under the Loan Documents and Owner's obligations under the Senior Loan Documents.

Section 3.5 Financial Condition.

(a) Each of Borrower and Owner is solvent, and no proceeding under Creditors' Rights Laws with respect to Borrower, Owner, the Collateral or the Property (or any portion thereof) has been initiated and Borrower has received reasonably equivalent value for the granting of the Security Instrument.

(b) No petition in bankruptcy has been filed by or against Borrower, Owner, Sponsor, Guarantor or any related entity, or any principal, general partner or member thereof and neither Borrower, Owner, Sponsor, Guarantor nor any related entity, or any principal, general partner or member thereof has ever made any assignment for the benefit of creditors or taken advantage of any Creditors' Rights Laws.

(c) Neither Borrower nor Owner is contemplating either the filing of a petition by it under any Creditors' Rights Laws or the liquidation of its assets or property, and Borrower does not have any knowledge of any Person contemplating the filing of any such petition against Borrower or Owner.

Section 3.6 Disclosure.

Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 3.7 No Plan Assets.

As of the date hereof and throughout the term of the Loan (a) neither Borrower nor Owner is and will not be an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (b) neither Borrower nor Owner is and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA, (c) transactions by or with Borrower or Owner are not and will not be subject to any state statute, regulation or ruling regulating investments of, or fiduciary obligations with respect to, governmental plans, and (d) none of the assets of Borrower or Owner constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA. As of the date hereof, none of Borrower, Owner or any ERISA Affiliate maintains, sponsors or contributes to a Defined Benefit Plan or a Multiemployer Plan. None of Borrower, Owner or an ERISA Affiliate sponsors, contributes to or maintains either currently or in the past a plan, document, agreement, or arrangement subject to ERISA.

Section 3.8 Not a Foreign Person.

Neither Borrower nor Owner is a “foreign person” within the meaning of § 1445(f)(3) of the IRS Code.

Section 3.9 Business Purposes.

The Loan is solely for Borrower’s business purposes, and is not for personal, family, household, or agricultural purposes.

Section 3.10 Borrower Information.

Borrower’s mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct. Borrower is not subject to back-up withholding taxes.

Section 3.11 Status of Property.

(a) Borrower has caused Owner to obtain all material certificates, licenses, permits, franchises, consents, and other approvals, governmental and otherwise, necessary for the ownership and operation of the Property and the conduct of its business (collectively, “**Licenses**”) and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use laws, Environmental Laws and other similar Applicable Law and neither Borrower nor Owner has received any notice nor has knowledge of any violation thereof.

(c) The Property is served by all utilities necessary for the current use thereof.

(d) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public. The Property has either direct access to such public roads or streets or access to such public roads or streets by virtue of a perpetual easement or similar agreement inuring in favor of Owner and any subsequent owners of the Property.

(e) The Property is free from damage caused by fire or other casualty. The Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and neither Borrower nor Owner has received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(f) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under Applicable Law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of the Mortgage.

(g) Borrower has caused Owner to pay in full for, and Owner is the owner of, all furnishings, fixtures and equipment (other than Tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created by the Mortgage and the other Senior Loan Documents.

(h) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Law.

(i) No portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Borrower has caused Owner to obtain and will maintain the insurance prescribed in Section 7.1(a) hereof. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(j) Except for encroachments that are insured against pursuant to the Title Insurance Policy or otherwise do not cause a Material Adverse Effect, all the Improvements lie within the boundaries of the Land and any building restriction lines applicable to the Land and no improvements on adjoining properties encroach onto the Property.

(k) To Borrower's knowledge, the surveys for each Individual Property delivered to Lender in connection with the Loan have been prepared by a professional and properly licensed land surveyor in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys. To Borrower's knowledge, no Survey fails to reflect any material matter affecting any Individual Property or title thereto.

(l) To Borrower's knowledge after due inquiry, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

(m) Owner has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property owned by it, free and clear of all liens whatsoever except the Permitted Encumbrances.

Section 3.12 Financial Information.

All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of the Property or otherwise in connection with the Loan (a) are true, correct and complete in all material respects, (b) accurately represent the financial condition of Borrower, Owner, the Collateral and the Property, as applicable, as of the date of such reports, and (c) have been prepared in accordance with an Approved Accounting Method throughout the periods covered, except as disclosed therein. Neither Borrower nor Owner has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and that could have a Material Adverse Effect. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower, Owner, the Collateral or the Property from that set forth in said financial statements.

Section 3.13 Condemnation.

No Condemnation or other proceeding has been commenced, is pending or, to Borrower's best knowledge, is threatened with respect to all or any portion of the Property or for the relocation of the access to the Property.

Section 3.14 Easements, Utilities and Public Access.

The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the continued use and enjoyment of the Property are located either in the public right of way abutting the Property (which are connected so as to serve the Property without passing over any other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy.

Section 3.15 Separate Lots.

Each Individual Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

Section 3.16 Insurance.

Borrower has caused Owner to obtain and has delivered to Lender original or certified copies of the Policies, with all premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made under any of the Policies, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

Section 3.17 Use of Property.

The Property is used exclusively for retail and office uses and other appurtenant and related uses.

Section 3.18 Leases and Rent Roll.

Except as disclosed in the rent roll for the Property delivered to and approved by Lender (the “**Rent Roll**”) and the aging report and Tenant estoppels delivered to and approved by Lender, (a) Borrower is the sole owner of the entire lessor’s interest in the Leases; (b) the Leases are valid and enforceable against Owner and the Tenants set forth therein and are in full force and effect; (c) all of the Leases are arms-length agreements with bona fide, independent third parties; (d) except as otherwise disclosed to Lender prior to the Closing Date, no party under any Lease is in default beyond any applicable notice and cure periods; (e) all Rents due have been paid in full and no Tenant is in arrears in its payment of Rent; (f) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (g) none of the Rents have been collected for more than one (1) month in advance (except a security deposit shall not be deemed rent collected in advance); (h) the premises demised under the Leases have been completed and the Tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis with no rent concessions to any Tenants; (i) there exist no offsets or defenses to the payment of any portion of the Rents and Owner has no monetary obligation to any Tenant under any Lease; (j) neither Borrower nor Owner has received any notice from any Tenant challenging the validity or enforceability of any Lease; (k) there are no agreements with the Tenants under the Leases other than expressly set forth in each Lease; (l) no Lease contains an option to purchase, right of first refusal to purchase, right of first refusal to lease additional space at the Property, or any other similar provision; (m) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (n) no Tenants have exercised any right to “go dark” that they may have under their Leases and no event has occurred that, but for the giving of notice and/or passage of time, would give any Tenant any right to abate rent, “go dark” or terminate any Lease; (o) all security deposits relating to the Leases reflected on the Rent Roll have been collected by Owner; (p) no brokerage commissions or finders fees are due and payable regarding any Lease; (q) each Tenant is in actual, physical occupancy of the premises demised under its Lease and is paying full rent under

its Lease; and (r) no Tenant occupying twenty percent (20%) or more (by square feet) of the net rentable area of the Property is, to Borrower's knowledge, a debtor in any state or federal bankruptcy, insolvency or similar proceeding.

Section 3.19 Management Agreement.

The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

Section 3.20 Illegal Activity/Forfeiture.

(a) No portion of the Property has been or will be purchased with proceeds of any illegal activity, and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of medical marijuana).

(b) There has not been and shall never be committed by Borrower or Owner or, to Borrower's knowledge, any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under the Loan Documents or Owner's obligations under the Senior Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower also hereby covenants and agrees that it shall not permit Owner to commit, and shall use commercially reasonable efforts to prohibit, any illegal activities or activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of medical marijuana) and, if Borrower becomes aware of any such activities at the Property, it shall not permit the same to continue.

Section 3.21 Taxes.

Borrower has filed and has caused Owner to file, all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by Borrower or Owner and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Borrower knows of no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 3.22 Permitted Encumbrances.

None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Loan Documents or the Senior Loan Documents, materially and adversely affects the value or marketability of the Property or the Collateral, impairs the use or the operation of the Property or the ownership of the Collateral or impairs Borrower's or Owner's ability to pay its respective obligations in a timely manner.

Section 3.23 Material Agreements.

With respect to each Material Agreement, (a) each of the Material Agreements is in full force and effect, there are no monetary or other defaults by Borrower or Owner thereunder and, to the best knowledge of Borrower, there are no monetary or other defaults thereunder by any other party thereto, (b) none of Borrower, Owner, Manager or any other Person acting on Borrower's or Owner's behalf has given or received any notice of default under any Material Agreement that remains outstanding or in dispute, (c) Borrower has delivered true, correct and complete copies of the Material Agreements (including all amendments and supplements thereto) to Lender.

Section 3.24 Non-Consolidation Opinion Assumptions.

All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto, are true, complete and correct.

Section 3.25 Federal Reserve Regulations.

No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Applicable Law or by the terms and conditions of the Loan Documents.

Section 3.26 Investment Company Act.

Neither Borrower nor Owner is (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 3.27 Solvency.

(a) Borrower (i) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature

(taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

(b) Owner has not entered into the Senior Loan or any Senior Loan Document with the actual intent to hinder, delay, or defraud any creditor and (ii) received reasonably equivalent value in exchange for its obligations under the Senior Loan Documents. Giving effect to the Senior Loan, the fair saleable value of Owner's assets exceeds and will, immediately following the making of the Senior Loan, exceed Owner's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Owner's assets is and will, immediately following the making of the Senior Loan, be greater than Owner's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Owner's assets do not and, immediately following the execution and delivery of the Senior Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Owner does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Owner).

Section 3.28 Embargoed Person.

As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any transfers of interests permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Sponsor or Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or country which is a sanctioned person, entity or country under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder (including regulations administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury and the Specially Designated Nationals List maintained by OFAC) with the result that the investment in Borrower, Owner, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan made by Lender is in violation of Applicable Law ("Embargoed Person"); (b) unless expressly waived in writing by Lender, no Embargoed Person has any interest of any nature whatsoever in Borrower, Owner, Sponsor or Guarantor, as applicable, with the result that the investment in Borrower, Owner, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law; and (c) to the best knowledge of Borrower, none of the funds of Borrower, Owner, Sponsor or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, Owner, Sponsor and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower, Owner, Sponsor or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property or the Collateral is designated as an Embargoed Person, Borrower shall immediately notify Lender in writing. At Lender's option, it shall be an Event of Default hereunder if Borrower, Owner, Guarantor, Sponsor or any other party to the Loan is designated as an Embargoed Person.

Section 3.29 Patriot Act.

All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act (collectively referred to in this Section only as the “**Patriot Act**”) are incorporated into this Section. Borrower hereby represents and warrants that Borrower, Owner, Sponsor and Guarantor and each and every Person affiliated with Borrower, Owner, Sponsor and/or Guarantor or that to Borrower’s knowledge has an economic interest in Borrower, or, to Borrower’s knowledge, that has or will have an interest in the transaction contemplated by this Agreement or in the Property or the Collateral or will participate, in any manner whatsoever, in the Loan, is: (i) in full compliance with all applicable requirements of the Patriot Act and any regulations issued thereunder; (ii) operated under policies, procedures and practices, if applicable, that are in compliance with the Patriot Act and available to Lender for Lender’s review and inspection during normal business hours and upon reasonable prior notice; (iii) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Act; (iv) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (v) not owned or controlled by or now acting and or will in the future act for or on behalf of any person who has been determined to be subject to the prohibitions contained in the Patriot Act. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower, Owner, Sponsor or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property or the Collateral is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall immediately notify Lender. At Lender’s option, it shall be an Event of Default hereunder if Borrower, Owner, Guarantor, Sponsor or any other party to the Loan is indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

Section 3.30 Organizational Chart.

The organizational chart attached as Schedule II hereto, relating to Borrower, Owner and certain Affiliates and other parties, is true, complete and correct on and as of the date hereof. No Person other than those Persons shown on Schedule II have any ownership interests in, or right to Control, directly or indirectly, Borrower.

Section 3.31 Bank Holding Company.

Neither Borrower nor Owner is a “bank holding company” or a direct or indirect subsidiary of a “bank holding company” as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System.

Section 3.32 REA Representations.

With respect to each REA, (a) each REA is in full force and effect and has not been amended or modified and Borrower's interest therein has not been assigned pursuant to any assignment which survives the Closing Date except the assignment to Lender pursuant to the Loan Documents, (b) there are no defaults under any REA by any party thereto and, to Borrower's knowledge, no event has occurred which, but for the passage of time, the giving of notice, or both, would constitute a default under any REA, (c) all sums due and payable under each REA have been paid in full, (d) no party to any REA has commenced any action or given or received any notice for the purpose of terminating any REA, (e) there are no liens capable of being asserted for amounts due under the provisions of any REA which, if unpaid, may be asserted as a lien prior to the lien of the Mortgage, and (f) the representations made in any estoppel or similar document delivered with respect to any REA in connection with the Loan, if any, are true, complete and correct and are hereby incorporated by reference as if fully set forth herein.

Section 3.33 No Change in Facts or Circumstances.

All information submitted by and on behalf of Borrower, Owner, Guarantor or Sponsor to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms of the Loan Documents and all statements of fact made by Borrower, Owner, Sponsor and/or Guarantor in this Agreement or in the other Loan Documents, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that would otherwise have a Material Adverse Effect.

Section 3.34 Perfection of Accounts.

Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code) in the Accounts in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold or otherwise conveyed the Accounts; and

(b) The Accounts constitute "deposit accounts" or "securities accounts" within the meaning of the Uniform Commercial Code.

Section 3.35 Full and Accurate Disclosure.

No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which adversely affects, nor as far as Borrower can foresee,

might adversely affect, the Property or the Collateral or the business, operations or condition (financial or otherwise) of Borrower or Guarantor.

Section 3.36 Intentionally Omitted.

Section 3.37 Guarantor and Sponsor Representations.

(a) Borrower hereby represents and warrants that, as of the date hereof, the representations and warranties set forth in Sections 3.1 through 3.8, 3.12, 3.18, 3.21, 3.27, 3.28, 3.29, 3.32, and 3.34 above are true and correct with respect to Guarantor, as the same are applicable to Guarantor. Wherever the term “Borrower” is used in each of the foregoing Sections it shall be deemed to be “Guarantor” with respect to Guarantor.

(b) Borrower hereby represents and warrants that, as of the date hereof, the representations and warranties set forth in Sections 3.3, 3.5, 3.12, and 3.27 through 3.29 above are true and correct with respect to Sponsor, as the same are applicable to Sponsor. Wherever the term “Borrower” is used in each of the foregoing Sections it shall be deemed to be “Sponsor” with respect to Sponsor.

Section 3.38 Senior Loan Matters.

The Senior Loan Outstanding Principal Balance, as of the Closing Date, is \$60,000,000. No Default or Event of Default (each as defined in the Senior Loan Agreement) has occurred under the Senior Loan Documents which remains uncured or unwaived. Each and every representation and warranty of Owner, made to Senior Lender contained in any one or more of the Senior Loan Documents is true, correct, complete and accurate in all material respects as of the date hereof and such representations and warranties are hereby incorporated into this Agreement and deemed made hereunder as and when made thereunder and shall remain incorporated without regard to any waiver, amendment or other modification thereof by the Senior Lender or to whether the related Senior Loan Document has been repaid, defeased or otherwise terminated, unless otherwise consented to in writing by Lender.

Section 3.39 Status of Collateral.

(a) Owner has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property owned by it, free and clear of all Liens whatsoever except the Permitted Encumbrances. Borrower is the sole beneficial owner of the Collateral and no Lien exists or will exist upon the Collateral at any time (and no right or option to acquire the same exists in favor of any other Person). The Collateral is not and will not be subject to any contractual restriction upon the transfer thereof (except for any such restriction contained in the Security Instrument or other Loan Documents). The Security Instrument, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create a valid, first priority, perfected Lien on Borrower's interest in the Collateral described therein, all in accordance with the terms thereof. There are no mechanics', materialman's or other similar Liens or claims which have been filed for work, labor or materials affecting the Property which are or may be Liens prior to, or equal or coordinate with, the Liens created by the Senior Loan Documents.

(b) The chief place of business of Borrower and the office where Borrower keeps its records concerning the Collateral will be located at all times at the address specified as Borrower's address herein.

(c) The Pledged Equity has been duly authorized and validly issued and are fully paid and non-assessable and are not subject to any options to purchase or similar rights of any Person.

(d) All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid under Applicable Law in connection with the transfer of the Property to Owner and the transfer of the Pledged Equity to Borrower have been paid or are being paid simultaneously herewith. All recording or other similar tax required to be paid under Applicable Law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents have been paid or are being paid simultaneously herewith.

(e) The Security Instruments create a valid security interest in the Collateral, securing the payment of the Debt, and upon the filing in the appropriate filing offices of the financing statements to be delivered pursuant to this Agreement, such security interests will be perfected, first priority security interests, and all filings and other actions necessary to perfect such security interests will have been duly taken. Upon the exercise of its rights and remedies under the Security Instruments, Lender will succeed to all of the rights, titles and interest of Borrower in Owner without the consent of any other Person and will, without the consent of any other Person, be admitted as the sole member in each respective Owner.

Section 3.40 Contractual Obligations.

Other than the Loan Documents, the Borrower's LLC Agreement, and the Owner's limited liability company agreement, Borrower is not currently subject to any Contractual Obligations and has not entered into any agreement, instrument or undertaking by which it or its assets are bound or incurred any indebtedness. Prior to the date of this Agreement, Borrower has not entered into any Contractual Obligation, or any agreement, instrument or undertaking by which it or its assets are bound or incurred any indebtedness.

Borrower agrees that, unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article III and elsewhere in this Agreement and the other Loan Documents shall survive and continue in full force and effect for so long as any portion of the Debt remains owing to Lender. All representations, warranties, covenants and agreements made in this Agreement and in the other Loan Documents shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE IV

BORROWER COVENANTS

From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the lien of the Security Instrument (and all related obligations) in accordance with the terms of the Loan Documents, Borrower

hereby covenants and agrees with Lender that Borrower shall comply with the following (and that Borrower shall cause Owner to comply with the following (with each reference to Borrower being deemed to mean and refer to Owner in addition to Borrower, except where the context indicates otherwise)):

Section 4.1 Existence.

Borrower will continuously maintain, and shall cause Owner to continuously maintain, (a) its existence and shall not (to the fullest extent permitted by law) dissolve, divide (whether pursuant to Section 18-217 of the Act or otherwise), merge, liquidate or consolidate or permit the occurrence of any of the foregoing, (b) its rights to do business in the applicable State and (c) its franchises and trade names, if any.

Section 4.2 Applicable Law.

(a) Borrower shall and shall cause Owner to, promptly comply and shall cause the Property and the Collateral, as applicable, to comply in all material respects with all Applicable Law affecting Borrower, Owner, the Collateral and the Property, or the use thereof, including, without limitation, all Environmental Laws and Applicable Law relating to OFAC, Embargoed Persons and the Patriot Act. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, Licenses, permits, trade names, and franchises. Borrower shall give prompt notice to Lender of the receipt by Borrower or Owner of any notice related to a violation of any Applicable Law and of the commencement of any proceedings or investigations which relate to compliance with Applicable Law.

(b) After prior written notice to Lender, Borrower, at its own expense, may consent and/or may cause Owner to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Applicable Law, the applicability of any Applicable Law to Borrower, Owner, the Collateral or the Property or any alleged violation of any Applicable Law, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower and/or Owner, as applicable, is subject and shall not constitute a default thereunder and such proceeding shall be permitted by and conducted in accordance with all Applicable Law; (iii) neither the Property nor the Collateral nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall, and shall cause Owner to, promptly upon final determination thereof comply with any such Applicable Law determined to be valid or applicable or cure any violation of any Applicable Law; (v) such proceeding shall suspend the enforcement of the contested Applicable Law against Borrower, Owner, the Collateral or the Property; and (vi) Borrower shall, or shall cause Owner to, furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Applicable Law, together with all interest and penalties payable in connection therewith (provided that, the foregoing subclause shall not apply so long as Owner is complying such the terms of Section 4.2(b) of the Senior Loan Agreement). Lender may apply any such security or part thereof, as necessary to cause compliance with such Applicable Law at any time when, in the judgment of Lender, the validity, applicability or violation of such Applicable Law is finally

established or the Property or the Collateral (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

Section 4.3 Maintenance and Use of Property.

Borrower shall, and shall cause Owner to, cause the Property to be maintained in a good and safe condition and repair in all material respects. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender or as otherwise permitted pursuant to Section 4.21 hereof. Borrower shall cause Owner to promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.13 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not, and shall not permit Owner to, initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not, and will not permit Owner to cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

Section 4.4 Waste.

Borrower shall not, and shall not permit Owner to, commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security for the Loan. Borrower will not, and will not permit Owner to, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

Section 4.5 Taxes and Other Charges.

(a) Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property, the Collateral or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes and Other Charges shall be suspended for so long as Borrower causes Owner to comply with the terms and provisions of Section 8.2 of the Senior Loan Agreement. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Borrower is not required to furnish such receipts for payment of Taxes and Other Charges in the event that such Taxes and Other Charges have been paid by Lender pursuant to Section 8.2 hereof). Borrower shall not, and shall not permit Owner to, suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property and/or the Collateral (as applicable) and shall promptly pay for all utility services provided to the Property.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest or may cause Owner to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or Owner is subject and shall not constitute a default thereunder and such proceeding shall be permitted by and conducted in accordance with all Applicable Law; (iii) none of the Property, the Collateral or any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Borrower shall promptly upon final determination thereof, pay or cause Owner to pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property and/or the Collateral (as applicable); and (vi) Borrower shall, or shall cause Owner to, furnish such security as may be required in the proceeding, or deliver to Lender such reserve deposits as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon (provided that, the foregoing subclause shall not apply so long as Owner is complying such the terms of Section 4.5 of the Senior Loan Agreement). Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property and/or the Collateral (as applicable) (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the lien of the Mortgage or the Security Instrument, as applicable, being primed by any related lien.

Section 4.6 Litigation.

Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower, Guarantor, Sponsor or the Property which might have a Material Adverse Effect.

Section 4.7 Access to Property.

Subject to the rights of Tenants under Leases, Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 4.8 Notice of Default.

Borrower shall promptly advise Lender of any material adverse change in Borrower's, Sponsor's and/or Guarantor's condition (financial or otherwise) or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

Section 4.9 Cooperate in Legal Proceedings.

Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the Note, the Security Instrument or the

other Loan Documents and, in connection therewith, permit Lender, at Lender's election, to participate in any such proceedings.

Section 4.10 Performance by Borrower.

Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision to be observed and performed by Borrower under the Loan Documents and any other agreement or instrument affecting or pertaining to the Property or the Collateral and any amendments, modifications or changes thereto. Borrower shall cause Owner to, in a timely manner, observe, perform and fulfill the covenants, terms and provisions to be observed and performed by Owner under the Senior Loan Documents and any other material agreement or instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 4.11 Awards.

Borrower shall, and shall cause Owner to, cooperate with Lender in obtaining for Lender the benefits of any Awards or insurance proceeds lawfully or equitably payable in connection with the Property or the Collateral, and Lender shall be reimbursed for any expenses incurred in connection therewith (including reasonable, actual attorneys' fees and disbursements, and the payment by Lender of the expense of an appraisal on behalf of Borrower in case of a Casualty or Condemnation affecting the Property or any part thereof) out of such Awards or insurance proceeds.

Section 4.12 Books and Records.

(a) Borrower shall, and shall cause Owner to, keep adequate books and records of account in accordance with an Approved Accounting Method, or in accordance with other methods acceptable to Lender in its reasonable discretion (consistently applied), and furnish to Lender:

(i) quarterly (other than for a single tenant property) (and, prior to the final Securitization involving the Loan, monthly) and annual certified rent rolls (in the form approved by Lender in connection with the closing of the Loan) and tenant sales reports (if applicable and to the extent received by Borrower and to the extent that Borrower is permitted to disclose the same pursuant to the terms of the applicable Leases), each signed and dated by a Responsible Officer of Borrower, within thirty (30) days after the end of each calendar quarter and within ninety (90) days after the end of each calendar year, as applicable;

(ii) quarterly (other than for a single tenant property) (and, prior to the final Securitization involving the Loan, monthly) and annual operating statements of the Property detailing the revenues received, the expenses incurred and major capital improvements for the period of calculation and containing appropriate year-to-date information; a balance sheet for such calendar quarter (comparing budgeted and actual costs and expenses); and an aged receivables and delinquency report, each prepared and certified by a Responsible Officer of Borrower in the form required by Lender, within

twenty (20) days after the end of each calendar quarter and within ninety (90) days after the end of each calendar year, as applicable;

(iii) an annual balance sheet, profit and loss statement, statement of cash flow, and statement of change in financial position of Borrower and Owner prepared and reviewed by an independent certified public accountant reasonably acceptable to Lender, within ninety (90) days after the close of each fiscal year of Borrower and Owner; provided, however, at Lender's request, such items shall be audited by an independent certified public accountant reasonably acceptable to Lender;

(iv) an annual operating statement of the Property prepared and reviewed by an independent certified public accountant reasonably acceptable to Lender, detailing the revenues received, the expenses incurred and major capital improvements for the period of calculation and containing appropriate year-to-date information, within ninety (90) days after the close of each fiscal year of Borrower and Owner; provided, however, at Lender's request, such operating statement shall be audited by an independent certified public accountant reasonably acceptable to Lender;

(v) by no later than December 15th of each calendar year, an annual operating budget for the next succeeding calendar year presented on a monthly basis consistent with the annual operating statement described above for the Property, including cash flow projections for the upcoming year and all proposed capital replacements and improvements (the "**Annual Budget**"). Lender shall have the right to approve each Annual Budget and no Annual Budget shall take effect unless and until the same has been approved by Lender; and

(vi) by no later than ten (10) days after and as of the end of each calendar month during the period prior to Securitization (if requested by Lender), and thereafter by no later than thirty (30) days after and as of the end of each calendar quarter, a summary report containing each of the following with respect to the Property for the most recently completed calendar month or quarter (as applicable): (A) to the extent received by Borrower and to the extent that Borrower is permitted to disclose the same pursuant to the terms of the applicable Leases, aggregate sales by tenants under Leases or other occupants of the Property, in such form as received by Borrower, (B) rent per square foot payable by each such tenant or occupant, (C) aggregate occupancy of the Property by anchor space and in-line store space and (D) a tenant aging and receivables report.

(b) Upon request from Lender, Borrower shall, or shall cause Owner to, furnish in a timely manner to Lender:

(i) a property management report for the Property, showing the number of inquiries made and/or rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by a Responsible Officer of Borrower to be true and complete, but no more frequently than quarterly; and

(ii) an accounting of all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions.

(c) Within ten (10) days of Lender's request, Borrower shall furnish Lender (and shall cause Owner, Sponsor and/or Guarantor to furnish to Lender) with such other additional financial or management information (including State and Federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender. Borrower shall furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records at any reasonable time from time to time during business hours upon reasonable advance notice.

(d) Borrower agrees that all financial statements and other items required to be delivered to Lender pursuant to this Section 4.12 (each a "**Required Financial Item**" and, collectively, the "**Required Financial Items**") shall: (i) be complete and correct in all material respects; (ii) present fairly the financial condition of the party; (iii) disclose all liabilities that are required to be reflected or reserved against; and (iv) be prepared (A) in hardcopy and electronic formats and (B) in accordance with an Approved Accounting Method or in accordance with other methods acceptable to Lender in its sole discretion (consistently applied). Borrower shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement, there has been no material adverse change in financial condition, nor have any assets or properties been sold, transferred, assigned, mortgaged, pledged or encumbered since the date of such financial statement except as disclosed by Borrower in a writing delivered to Lender. Borrower agrees that all Required Financial Items shall not contain any misrepresentation or omission of a material fact.

(e) If any Required Financial Item is not timely delivered ("**Reporting Failure**"), following written notice from Lender, Borrower shall promptly pay to Lender, as a late charge, the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per Required Financial Item. In addition, Borrower shall promptly pay to Lender an additional late charge of Five Hundred and No/100 Dollars (\$500.00) per Required Financial Item for each full month during which such Reporting Failure continues following written notice from Lender. Borrower acknowledges that Lender will incur additional expenses as a result of any such Reporting Failure, which expenses would be impracticable to quantify, and that Borrower's payments under this Section 4.12 are a reasonable estimate of such expenses. Borrower acknowledges further that the payment by Borrower of this late charge does not in any manner affect or otherwise impair or waive any rights and remedies Lender may have hereunder, under the Loan Documents or under Applicable Law for any Event of Default.

Section 4.13 Estoppel Certificates.

(a) Within ten (10) days after Lender's request, Borrower shall deliver to Lender a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan and the Senior Loan, (ii) the unpaid principal amount of the Loan and the Senior Loan, (iii)

the interest rate of the Loan and the Senior Loan, (iv) the date installments of principal and/or interest were last paid under the Loan and the Senior Loan, (v) any offsets or defenses to the payment and performance of the obligations secured hereby, if any, and (vi) that the Loan Documents and the Senior Loan Documents are valid, legal and binding obligations of Borrower and Owner, respectively, and have not been modified (or, if modified, giving particulars of such modification), (vii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (viii) that all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications), (ix) the date to which the Rents thereunder have been paid pursuant to the Leases, (x) whether or not, to the best knowledge of Borrower, any of the Tenants are in default under the Leases, (xi) the amount of security deposits held by Owner under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations created and evidenced hereby and by the Security Instrument, the Collateral, the Mortgage or the Property. In connection with the Securitization of the Loan (or any portion thereof or interest therein), at Lender's request, Borrower shall provide an estoppel certificate to any Investor or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may require.

(b) Borrower shall use its best efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more Tenants as required by Lender attesting to such facts regarding the Lease as Lender may require, including, but not limited to, attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Borrower shall use commercially reasonable efforts to deliver to Lender, upon request, estoppel certificates from each party under each REA and each Material Agreement in form and substance reasonably acceptable to Lender.

Section 4.14 Leases and Rents.

(a) Upon request, Borrower shall furnish Lender with executed copies of all Leases then in effect. All renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and shall be arm's length transactions with bona fide, independent third-party Tenants. Within ten (10) days after the execution of a Lease or any renewals, amendments or modification of a Lease, Borrower shall deliver to Lender a copy thereof, together with Borrower's certification that such Lease (or such renewal, amendment or modification) was entered into in accordance with the terms of this Agreement.

(b) Any Lease and any renewals, amendments or modification of a Lease (provided such Lease or Lease renewal, amendment or modification is not a Major Lease (or a renewal, amendment or modification to a Major Lease)) that meets the following requirements may be entered into by Owner without Lender's prior consent: such Lease (i) provides for economic terms, including rental rates, comparable to existing local market rates for similar properties and is otherwise on commercially reasonable terms, (ii) has an initial term of not less than three (3)

years and a total term (together with all extension and renewal options) of not more than ten (10) years, (iii) unless a copy of a subordination, non-disturbance and attornment agreement is delivered pursuant to this Section 4.14, provides that such Lease is subordinate to the Mortgage and that the lessee will attorn to Senior Lender and any purchaser at a foreclosure sale, (iv) is written substantially in accordance with the standard form of Lease which shall have been approved by Lender (subject to any commercially-reasonable changes made in the course of negotiations with the applicable Tenant), (v) is not with an Affiliate of Borrower, Owner or any Guarantor, and (vi) does not contain any option to purchase, any right of first refusal to purchase, any right to terminate (except in the event of the destruction or condemnation of substantially all of the Property) or any other terms which would cause a Material Adverse Effect. All other Leases (including Major Leases) and all renewals, amendments and modifications thereof (including, without limitation, any subletting or assignment thereunder not contemplated by the express terms of such Lease (other than any subletting or assignment which does not require Owner's consent under such Lease)) executed after the date hereof shall be subject to Lender's prior approval, which approval shall not be unreasonably withheld or delayed.

(c) Intentionally Omitted.

(d) Borrower shall, and shall cause Owner to, (i) observe and perform the obligations imposed upon the lessor under the Leases in all material respects in a commercially reasonable manner; (ii) enforce the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner, provided, however, Borrower shall not permit Owner to terminate or accept a surrender of a Major Lease without Lender's prior approval; (iii) not collect any of the Rents more than one (1) month in advance (other than security deposits); (iv) not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) not, without Lender's consent, alter, modify or change any Lease so as to change the amount of or payment date for rent, change the expiration date, grant any option for additional space or term, materially reduce the obligations of the lessee or increase the obligations of lessor; and (vi) hold all security deposits under all Leases in accordance with Applicable Law.

(e) Notwithstanding anything contained herein to the contrary, Borrower shall not willfully withhold from Lender any information regarding renewal, extension, amendment, modification, waiver of provisions of, termination, rental reduction of, surrender of space of, or shortening of the term of, any Lease during the term of the Loan. Borrower further agrees to provide Lender with written notice of a Tenant "going dark" under such Tenant's Lease within five (5) Business Days after Borrower becomes aware that such Tenant "goes dark" and Borrower's failure to provide such notice shall constitute an Event of Default. Borrower's delivery of the certified rent roll required pursuant to Section 4.12 hereof shall not, in and of itself, satisfy the requirement of the preceding sentence.

(f) Intentionally Omitted.

(g) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior approval is required for any leasing matters set forth in this Section 4.14, Lender shall have ten (10) Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such

request to Lender is marked in bold lettering with the following language: “LENDER’S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A LOAN AGREEMENT BETWEEN THE UNDERSIGNED AND LENDER” and the envelope containing the request must be marked “PRIORITY”. In the event that Lender fails to respond to the leasing matter in question within such time, Lender’s approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably required by Lender. For purposes of clarification, Lender requesting additional and/or clarified information, in addition to approving or denying any request (in whole or in part), shall be deemed a response by Lender for purposes of the foregoing.

Section 4.15 Management Agreement.

(a) Borrower shall cause Owner to (i) diligently perform, observe and enforce all of the terms, covenants and conditions of the Management Agreement to be performed, observed and enforced, and (ii) promptly notify Lender of any notice received by Borrower or Owner of any default by Owner under any Management Agreement together with a true copy of each such notice. Without Lender’s prior written consent, Borrower shall not permit Owner to surrender, consent to the assignment by Manager of its interest under, terminate or cancel, or modify, change, supplement, alter or amend any Management Agreement, in any respect, and any such surrender, termination, cancellation, modification, change, supplement, alteration or amendment of such Management Agreement without the prior consent of Lender shall be void and of no force and effect.

(b) If Owner defaults in the performance or observance of any material term, covenant or condition of the Management Agreement, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any appropriate action to cause all the terms, covenants and conditions of the Management Agreement on the part of Owner to be performed or observed to be promptly performed or observed on behalf of Owner, to the end that the rights of Owner in, to and under the Management Agreement shall be kept unimpaired and free from default. Subject to the rights of Senior Lender under the Senior Loan Documents, Lender and any Person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If Manager shall deliver to Lender a copy of any notice sent to Borrower of default under the Management Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon.

(c) Borrower shall notify Lender if Manager sub-contracts to a third party or an affiliate any or all of its management responsibilities under the Management Agreement. Borrower shall, from time to time, use its best efforts to obtain, or to cause Owner to cause, from Manager under the Management Agreement such certificates of estoppel with respect to compliance by Borrower with the terms of the Management Agreement as may be requested by Lender. Borrower shall cause Owner to exercise each individual option, if any, to extend or renew the term of the Management Agreement upon demand by Lender made at any time within

one (1) year of the last day upon which any such option may be exercised, and Borrower expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney is irrevocable and coupled with an interest. Any sums expended by Lender pursuant to this paragraph shall bear interest at the Default Rate from the date such cost is incurred to the date of payment to Lender, shall be deemed to constitute a portion of the Debt, shall be secured by the lien of the Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

(d) Without limitation of the foregoing, if any Management Agreement is terminated pursuant to the Consent of Manager or for any other reason, then Lender, at its option, may require Borrower to cause Owner to engage, in accordance with the terms and conditions set forth in the Assignment of Management Agreement, a new manager (the “**New Manager**”) to manage the applicable Individual Property, which such New Manager shall be a Qualified Manager. New Manager shall be engaged by Borrower pursuant to a written management agreement that complies with the terms hereof and of the Consent of Manager and is otherwise satisfactory to Lender in all respects. New Manager and Owner shall execute a Consent of Manager in the form then used by Lender. To the extent that such New Manager is an Affiliated Manager, Owner’s engagement of such New Manager shall be subject to Borrower’s delivery to Lender of a New Non-Consolidation Opinion with respect to such New Manager and new management agreement.

Section 4.16 Payment for Labor and Materials.

(a) With respect to any amount incurred by or on behalf of Borrower, Borrower will cause Owner to promptly pay (and, with respect to amounts incurred by any Tenant or any other Person, shall use commercially reasonable efforts (including, without limitation, enforcing the terms of the applicable Lease) to cause such Tenants or such other Person to promptly pay) when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (a “**Work Charge**”) and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests created hereby and by the Mortgage, except for the Permitted Encumbrances. Borrower shall promptly and, in any event, within thirty (30) days after Borrower has received notice of such lien or security instrument, discharge or cause to be discharged the same in case of the filing of any claim for lien or any proceeding for the enforcement thereof.

(b) After prior written notice to Lender, Borrower, at its own expense, may cause Owner to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Work Charge, the applicability of any Work Charge to Borrower, Owner or to the Property or any alleged non-payment of any Work Charge and defer paying the same, provided that (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with all Applicable Law and the provisions of any instrument to which Borrower or Owner is subject and shall not constitute a default thereunder; (iii) neither the Property nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower

shall promptly upon final determination thereof pay (or cause to be paid) any such contested Work Charge determined to be valid, applicable or unpaid; (v) such proceeding shall suspend the collection of such contested Work Charge from the Property or Borrower shall have paid the same (or shall have caused the same to be paid) under protest; and (vi) Borrower shall furnish (or cause to be furnished) such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure payment of such Work Charge, together with all interest and penalties payable in connection therewith (unless Borrower has paid or has caused to be paid all of the Work Charge being contested or Owner is complying with the terms of Section 4.16 of the Senior Loan Agreement). Lender may apply any such security or part thereof, as necessary to pay for such Work Charge at any time when, in the judgment of Lender, the validity, applicability or non-payment of such Work Charge is finally established or the Property (or any part thereof or interest therein) shall be in present danger of being sold, forfeited, terminated, cancelled or lost.

Section 4.17 Performance of Other Agreements.

Borrower shall, and shall cause Owner to, observe and perform each and every term to be observed or performed by Borrower or Owner pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Collateral or the Property, as applicable, or given by Borrower to Lender for the purpose of further securing the Debt and any amendments, modifications or changes thereto.

Section 4.18 Debt Cancellation.

Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

Section 4.19 ERISA.

(a) Borrower shall, and shall not permit Owner to, engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative exemption) prohibited transaction under ERISA ("ERISA") or constitute a violation of any state statute, regulation or ruling impacting a Defined Benefit Plan or a governmental plan.

(b) Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) neither Borrower nor Owner is an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) neither Borrower nor Owner is subject to any state statute, regulation or ruling regulating investments of, or fiduciary obligations with respect to, governmental plans; and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower or Owner are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower or Owner is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2), as modified by ERISA Section 3(42), disregarding the value of any equity interests in Borrower or Owner held by (I) a person (other than a benefit plan investor) who has discretionary authority or control with respect to the assets of Borrower or Owner, (II) any person who provides investment advice for a fee (direct or indirect) with respect to the assets of Borrower or Owner, or (III) any affiliate of a person described in the immediately preceding clause (I) or (II);

(iii) Borrower or Owner qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e);

(iv) The assets of Borrower or Owner are not otherwise “plan assets” of one or more “employee benefit plans” (as defined in Section 3(3) of ERISA) subject to Title I of ERISA, within the meaning of 29 C.F.R. §2510.3-101, as modified by ERISA Section 3(42); or

(v) If a state statute, regulation or ruling does apply to transactions by or with Borrower regulating investments of, or fiduciary obligations with respect to, governmental plans, no transactions contemplated by the Loan Documents will violate such statute, regulation or ruling.

(c) Borrower shall not, and shall not permit Owner to, maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Defined Benefit Plan or a Multiemployer Plan or permit the assets of Borrower to (i) become “plan assets”, whether by operation of law or under regulations promulgated under ERISA or (ii) become subject to any state statute, regulation or ruling regulating investments of, or fiduciary obligations with respect to, governmental plans.

Section 4.20 No Joint Assessment.

Borrower shall not, and shall not permit Owner to, suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

Section 4.21 Alterations.

Lender’s prior approval (which approval shall not be unreasonably withheld or delayed) shall be required in connection with any alterations to any Improvements (a) that may have a Material Adverse Effect, (b) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Alteration Threshold, or (c) that are structural in nature, except for (x) any alterations performed as a part of a Restoration in accordance with Section 7.4 of the Senior Loan Agreement, (y) any alterations or tenant improvements being made expressly pursuant to existing Leases that have been reviewed and approved by Lender and (z) any Immediate Repairs. Borrower shall cause Owner to complete

the Immediate Repairs in accordance with Section 8.4 of the Senior Loan Agreement. If the total unpaid amounts incurred and to be incurred with respect to any alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (i) cash, (ii) U.S. Obligations, (iii) other securities acceptable to Lender, or (iv) a completion bond acceptable to Lender (provided further that, the foregoing sentence shall not apply so long as Owner is complying such the terms of Section 4.21 of the Senior Loan Agreement). Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements over the Alteration Threshold. All alterations to any Improvements shall be made lien-free and in a good and workmanlike manner in accordance with all Applicable Laws.

Section 4.22 REA Covenants.

Borrower shall, and shall cause Owner to, (a) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by Owner under any REA and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any material default under any REA of which Borrower or Owner is aware; (c) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by Borrower or Owner under any REA; (d) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed under any REA in a commercially reasonable manner; (e) cause the Property to be operated, in all material respects, in accordance with any REA; and (f) not, without the prior written consent of Lender, (i) enter into any new REA or execute modifications to any existing REA, (ii) surrender, terminate or cancel any REA, (iii) reduce or consent to the reduction of the term of any REA, (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, any REA in any material respect, or (v) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under any REA.

Section 4.23 Material Agreements.

Borrower shall, and shall cause Owner to (a) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by Borrower or Owner under the Material Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any material default under the Material Agreements of which it is aware; (c) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by Borrower or Owner under the Material Agreements; (d) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed under the Material Agreements in a commercially reasonable manner; (e) cause the Property to be operated, in all material respects, in accordance with the Material Agreements; and (f) not, without the prior written consent of Lender, (i) enter into any new Material Agreement or execute modifications to any existing Material Agreements, (ii) surrender, terminate or cancel the Material Agreements, (iii) reduce or consent to the reduction of the term of the Material Agreements, (iv) increase or consent to the increase of the amount of any charges

under the Material Agreements, (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Material Agreements in any material respect, or (vi) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Material Agreements.

Section 4.24 O&M Program.

In the event any environmental report delivered to Lender in connection with the Loan recommends the development of or continued compliance with an operation and maintenance program for the Property (including, without limitation, with respect to the presence of asbestos or lead-based paint) (“**O&M Program**”), Borrower shall cause Owner to develop (or continue to comply with, as the case may be) such O&M Program and shall, during the term of the Loan, including any extension or renewal thereof, comply in all material respects with the terms and conditions of the O&M Program.

Section 4.25 Senior Loan Matters.

(a) Notices. Borrower shall deliver to Lender, promptly after its receipt or delivery, a copy of any written notice of default received or sent by Owner with respect to the Senior Loan and of any other material written correspondence (including electronically transmitted items) given or received by Owner or Guarantor to or from the Senior Lender or its agents.

(b) Independent Approval Rights. If any action, proposed action or other decision is consented to or approved by Senior Lender, such consent or approval shall not be binding or controlling on Lender. Borrower hereby acknowledges and agrees that (i) the risks of Senior Lender in making the Senior Loan are different from the risks of Lender in making the Loan, (ii) in determining whether to grant, deny, withhold or condition any requested consent or approval, Senior Lender and Lender may reasonably reach different conclusions, and (iii) Lender has an absolute independent right to grant, deny, withhold or condition any requested consent or approval based on its own point of view, but subject to the standards of consent set forth herein. Furthermore, the denial by Lender of a requested consent or approval shall not create any liability or other obligation of Lender if the denial of such consent or approval results directly or indirectly in a default under the Senior Loan Documents, and Borrower hereby waives any claim of liability against Lender arising from any such denial unless Lender has not complied with any applicable standard for consent. The rights described above may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

(c) Intercreditor Agreement. Borrower hereby acknowledges and agrees that (a) any intercreditor agreement entered into among Lender and Senior Lender (including, without limitation, the Intercreditor Agreement) will be solely for the benefit of Lender and Senior Lender, (b) neither Borrower nor Owner shall be third-party beneficiaries (intended or otherwise) of any of the provisions therein, have any rights thereunder, or be entitled to rely on any of the provisions contained therein, (c) neither Borrower nor Owner shall have any rights thereunder or shall be entitled to rely on any of the provisions contained therein, and (d) any such intercreditor agreement (including, without limitation, the Intercreditor Agreement) may allow Senior Lender certain additional forbearances and accommodations not otherwise available to Borrower

(including, among other things, additional time to cure defaults by Borrower and the right to purchase the Loan under certain circumstances) and that Borrower hereby waives any objection thereto. Lender and Senior Lender have no obligation to disclose to Borrower or Owner the contents of any such intercreditor agreement (including, without limitation, the Intercreditor Agreement). Borrower's obligations hereunder are and will be independent of any such intercreditor agreement (including, without limitation, the Intercreditor Agreement) and shall remain unmodified by the terms and provisions thereof.

(d) Reporting. Unless otherwise delivered to Lender pursuant to the provisions of Section 4.12 hereof, Borrower shall deliver to Lender all of the financial statements and material reports, certificates and related items delivered or required to be delivered by Owner to Senior Lender under the Senior Loan Documents as and when due under the Senior Loan Documents.

(e) Estoppel Certificates. After written request by Lender, Borrower shall request from Senior Lender such estoppel certificates with respect to the status of the Senior Loan and compliance by Owner with the terms of the Senior Loan Documents as may reasonably be requested by Lender.

(f) Compliance with Senior Loan Documents. Borrower shall (or shall cause Owner to): (i) pay all principal, interest and other sums required to be paid by Owner under and pursuant to the provisions of the Senior Loan Documents; (ii) diligently perform and observe all of the terms, covenants and conditions of the Senior Loan Documents on the part of Owner to be performed and observed, unless such performance or observance shall be waived in writing by Senior Lender; (iii) promptly notify Lender of the giving of any notice by Senior Lender to Owner or Borrower of any default by Owner in the performance or observance of any of the terms, covenants or conditions of the Senior Loan Documents on the part of Owner to be performed or observed and deliver to Lender a true copy of each such notice; (iv) deliver a true, correct and complete copy of all notices, demands, requests or material correspondence (including electronically transmitted items) given or received by Owner or Guarantor to or from the Senior Lender or its agent; and (v) not enter into or be bound by any Senior Loan Documents that are not approved by Lender. Without limiting the foregoing, Borrower shall cause Owner to fund all reserves required to be funded pursuant to the Senior Loan Documents. In the event of a refinancing of the Senior Loan permitted by the terms of this Agreement, Borrower will cause all reserves on deposit with Senior Lender to be utilized by Owner to reduce the amount due and payable to the Senior Lender or alternatively shall be remitted to Lender as a mandatory prepayment of the Loan.

(g) Senior Loan Defaults.

(i) Without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, if there shall occur any default under the Senior Loan Documents, Borrower hereby expressly agrees that Lender shall have the immediate right, without prior notice to Borrower, but shall be under no obligation: (x) to pay all or any part of the Senior Loan and any other sums that are then due and payable, and to perform any act or take any action on behalf of Borrower and/or Owner as may be appropriate, to cause all of the terms, covenants and conditions of the Senior Loan Documents on the part of Owner to be performed or

observed thereunder to be promptly performed or observed; and (y) to pay any other amounts and take any other action as Lender, in its sole and absolute discretion, shall deem advisable to protect or preserve the rights and interests of Lender in the Loan and/or the Collateral. All sums so paid and the costs and expenses incurred by Lender in exercising rights under this subclause (including attorneys' fees) (A) shall constitute additional advances of the Loan to Borrower, (B) shall increase the then unpaid principal of the Loan, (C) shall bear interest at the Default Rate for the period from the date that such costs or expenses were incurred to the date of payment to Lender, (D) shall constitute a portion of the Debt, and (E) shall be secured by the Security Instrument.

(ii) Borrower hereby indemnifies Lender from and against all liabilities, obligations, actual losses, damages, penalties, assessments, actions, or causes of action, judgments, suits, claims, demands, actual costs, expenses (including reasonable attorneys' and other professional fees, whether or not suit is brought, and settlement costs) and disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Lender as a result of the foregoing actions. Lender shall have no obligation to Borrower, Owner or any other party to make any such payment or performance. Borrower shall not impede, interfere with, hinder or delay, and shall not permit Owner to impede, interfere with, hinder or delay, any effort or action on the part of Lender to cure any default or asserted default under the Senior Loan, or to otherwise protect or preserve Lender's interests in the Loan and the Collateral following a default or asserted default under the Senior Loan.

(iii) Any default or breach by Owner under the Senior Loan Documents which is not cured prior to the expiration of any applicable grace, notice or cure period afforded to Owner under the Senior Loan Documents shall constitute an Event of Default, without regard to any subsequent payment or performance of any such obligations by Lender. Borrower hereby grants Lender and any person designated by Lender the right to enter upon the Property at any time following the occurrence and during the continuance of any default, or the assertion by Senior Lender that a default has occurred under the Senior Loan Documents, for the purpose of taking any such action or to appear in, defend or bring any action or proceeding to protect Borrower's, Owner's and/or Lender's interest. Lender may take such action as Lender deems reasonably necessary or desirable to carry out the intents and purposes of this subsection (including communicating with Senior Lender with respect to any Senior Loan defaults), without prior notice to, or consent from, Borrower. Lender shall have no obligation to complete any cure or attempted cure undertaken or commenced by Lender.

(iv) If Lender shall receive a copy of any notice of default under the Senior Loan Documents sent by Senior Lender to Owner, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. As a material inducement to Lender's making the Loan, Borrower hereby absolutely and unconditionally releases and waives all claims against Lender arising out of Lender's exercise of its rights and remedies provided in this Section, except for Lender's gross negligence or willful misconduct. In the event that Lender makes any payment in respect of the Senior Loan, Lender shall be subrogated to all of the rights of

Senior Lender under the Senior Loan Documents against the Property, in addition to all other rights it may have under the Loan Documents.

(h) No Amendment to Senior Loan Documents. Without obtaining the prior written consent of Lender, Borrower shall not cause or permit Owner to (i) enter into any amendment or modification of any of the Senior Loan Documents, (ii) grant to Senior Lender any consent or waiver or (iii) exercise any remedy available to Owner under the Senior Loan Documents or any right or election under the Senior Loan Documents. Borrower shall cause Owner to provide Lender with a copy of any amendment or modification to the Senior Loan Documents within five (5) days after the execution thereof.

(i) Acquisition of the Senior Loan. Neither Borrower or Owner or any Affiliate of any of them shall acquire or agree to acquire the Senior Loan, or any portion thereof or any interest therein, or any direct or indirect ownership interest in the holder of the Senior Loan, via purchase, transfer, exchange or otherwise, and any breach or attempted breach of this provision shall constitute an Event of Default hereunder. If, solely by operation of applicable subrogation law, Borrower or Owner or any Affiliate of any of them shall have failed to comply with the foregoing, then Borrower: (i) shall immediately notify Lender of such failure; (ii) shall cause any and all such prohibited parties acquiring any interest in the Senior Loan Documents: (A) not to enforce the Senior Loan Documents; and (B) upon the request of Lender, to the extent any of such prohibited parties has or have the power or authority to do so, to promptly: (1) cancel the promissory note evidencing the Senior Loan, (2) reconvey and release the lien securing the Senior Loan and any other collateral under the Senior Loan Documents, and (3) discontinue and terminate any enforcement proceeding(s) under the Senior Loan Documents.

(j) Deed in Lieu of Foreclosure. Without the prior written consent of Lender, Borrower shall not, and Borrower shall not cause, suffer or permit Owner to, enter into any deed-in-lieu or consensual foreclosure with or for the benefit of Senior Lender or any of its affiliates. Without the express prior written consent of Lender, Borrower shall not, and Borrower shall not cause, suffer or permit Owner to, enter into any consensual sale or other transaction in connection with the Senior Loan which could diminish, modify, terminate, impair or otherwise adversely affect the interests of Lender or Borrower, the Collateral or any portion thereof or any interest therein or of Owner in the Property or portion thereof or any interest therein.

(k) Refinancing or Repayment of the Senior Loan. Neither Borrower nor Owner shall make any partial or full prepayments of amounts owing under the Senior Loan or refinance the Senior Loan without the prior written consent of Lender, unless such refinancing results in the concurrent payment in full of the Debt in accordance with this Agreement.

Section 4.26 Handicapped Parking Spaces.

Borrower covenants and agrees to, within thirty (30) days of the date hereof, cause Owner to (i) designate four (4) additional parking spaces at the Seven Hills Plaza Property as handicapped in order to comply with the requirements set forth in the Americans with Disabilities Act, (ii) designate one (1) additional parking spaces at the Burlington Plaza West Property as handicapped in order to comply with the requirements set forth in the Americans

with Disabilities Act and (iii) deliver to Lender such evidence reasonably satisfactory to Lender of the completion of same.

Section 4.27 Violations.

Borrower shall cause Owner to comply with the terms and provisions of Section 4.27 of the Senior Loan Agreement with respect to removal and repairs of certain Violations (as defined therein).

Section 4.28 Environmental Insurance Policy.

Borrower shall not take any action (and shall not cause or permit Senior Borrower to take any action), including allowing a change in the use of the Seven Hills Plaza Property or the Cumberland Place Property that is materially different from the current use of such Property, such that coverage under the Environmental Insurance Policy could be denied by the insurer under the Environmental Insurance Policy.

Section 4.29 Limitation on Securities Issuance.

Neither Borrower nor Owner shall issue any membership interests or other securities other than those that have been issued as of the date hereof.

Section 4.30 Limitation on Distributions.

Following the occurrence and during the continuance of an Event of Default, Borrower shall not make any distributions to its members, partners or shareholders, as applicable.

Section 4.31 Collateral.

Borrower shall warrant and defend (a) its title to the Collateral (and shall cause Owner to warrant and defend its title to the Property), and every part thereof, and (b) the validity, perfection and priority of the Liens of the Security Instrument and the other Loan Documents on the Collateral, in each case against the claims of all Persons whomsoever. Borrower shall (or shall cause Owner to) reimburse Lender on demand for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Collateral or the Property, other than as permitted hereunder, is claimed by another Person.

Section 4.32 Owner's Title Policy.

Without the prior written consent of Lender, Borrower shall not give its consent or approval to any material modification, amendment, restatement, supplement or termination of the Owner's Title Policy, and Borrower shall not (and shall not permit Owner and/or any of its Affiliates to) take any actions or fail to take any actions, in each case, which would invalidate or otherwise materially impair the coverage provided under the Owner's Title Policy.

Section 4.33 Contractual Obligations.

Other than the Loan Documents, the limited liability company agreement of Owner (and the limited liability company interests in Owner issued pursuant thereto) and the Borrower's LLC Agreement, neither Borrower nor any of its assets shall be subject to any Contractual Obligations, and Borrower shall not enter into any agreement, instrument or undertaking by which it or its assets are bound, except for such liabilities that are incidental to its activities as a member of Owner and owner of the Collateral.

ARTICLE V**ENTITY COVENANTS****Section 5.1 Single Purpose Entity.**

(a) Each Borrower has not and will not:

(i) engage in any business or activity other than the ownership of the Collateral, and activities incidental thereto;

(ii) acquire or own any assets other than the Collateral;

(iii) merge into or consolidate with any Person, or (to the fullest extent permitted by law) dissolve, divide (whether pursuant to Section 18-217 of the Act or otherwise), merge, consolidate, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the Applicable Law of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

(v) own any subsidiary, or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person, except as contemplated by the Loan Documents with respect to other Borrowers;

(vii) incur any Indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation or entering into any PACE Loan or similar transaction in which payment thereof is made through Taxes), other than the Loan. No Indebtedness other than the Debt may be secured (subordinate or *pari passu*) by the Collateral;

(viii) fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates provided that (i) appropriate notation shall be made on such

consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other Person and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has maintained and will maintain its books, records, resolutions and agreements as official records;

(ix) enter into any contract or agreement with any general partner, member, shareholder, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties, except as contemplated by the Loan Documents with respect to other Borrowers;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person, except as contemplated by the Loan Documents with respect to other Borrowers;

(xi) assume or guaranty the debts of any other Person except other Borrowers, hold itself out to be responsible for the debts of any other Person except other Borrowers, or otherwise pledge its assets for the benefit of any other Person except other Borrowers or hold out its credit as being available to satisfy the obligations of any other Person, except as contemplated by the Loan Documents with respect to other Borrowers;

(xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns unless prohibited by Applicable Law from doing so (except that Borrower may file or may include its filing as part of a consolidated federal tax return, to the extent required and/or permitted by Applicable Law, provided that there shall be an appropriate notation indicating the separate existence of Borrower and its assets and liabilities);

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person and not as a division or part of any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (to the extent there exists sufficient cash flow from the Property to do so after the payment of all operating expenses and Debt Service and shall not require any equity owner to make additional capital contributions to Borrower);

(xvi) without the unanimous written consent of all of its partners or members, as applicable, and the consent of each Independent Director, take any Bankruptcy Action;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space) or fail to use separate stationery, invoices and checks;

(xviii) fail to remain solvent, to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case, to the extent there exists sufficient cash flow from the Property to do so);

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable or identify its partners, members or shareholders or other affiliates, as applicable, as a division or part of it; or

(xx) violate or cause to be violated the assumptions made with respect to Borrower and its principals in the Non-Consolidation Opinion or in any New Non-Consolidation Opinion.

(b) Borrower hereby represents and warrants that (I) Borrower (i) is and has always been duly formed, validly existing and in good standing in the state of its incorporation and in all other jurisdictions where it is qualified to do business; (ii) has not had and does not have any judgments or liens of any nature against it (except for tax liens not yet due); (iii) has been and is in compliance with all Applicable Law and has received all permits necessary for it to operate its contemplated business; (iv) is not the subject of, or currently involved in any capacity in, any pending or threatened litigation; (v) is not, and has not been, involved in any dispute with any taxing authority; (vi) has paid and has caused Owner to pay all Taxes and Other Charges; (vii) has never owned any property other than the Collateral and has never engaged in any business except the ownership and operation of the Collateral; (viii) is not now and has not ever been a party to any lawsuit, arbitration, summons or legal proceeding; (ix) has not failed to provide Lender with complete financial statements that reflect a fair and accurate view of its financial condition; and (x) has no material contingent or actual obligations not related to the Collateral or the Property; and (II) none of Borrower, Owner or Guarantor have any remaining liabilities or obligations in connection with any loan (other than the Loan, the Senior Loan and environmental and other limited and customary indemnity obligations).

(c) Intentionally Omitted.

(d) In the event Borrower is an Approved LLC, the limited liability company agreement of Borrower (the “**LLC Agreement**”) shall provide that (i) upon the occurrence of any event that causes the last remaining member of Borrower (“**Member**”) to cease to be the member of Borrower (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower in accordance with the terms of the Loan Documents and the LLC Agreement), any Person acting as Independent Director or “special member” of Borrower shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower automatically be admitted to Borrower as a member with a 0% economic interest (“**Special Member**”) and shall continue Borrower without dissolution and (ii) Special Member may not resign from Borrower or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower as a Special Member in accordance with requirements of Delaware or Maryland law (as applicable) and (B) after giving effect to such resignation or transfer, there remains at least two (2) Independent Directors of

Borrower in accordance with Section 5.2 below. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower upon the admission to Borrower of the first substitute member, (ii) Special Member shall be a member of Borrower that has no interest in the profits, losses and capital of Borrower and has no right to receive any distributions of the assets of Borrower, (iii) pursuant to the applicable provisions of the limited liability company act of the State of Delaware or Maryland (as applicable), Special Member shall not be required to make any capital contributions to Borrower and shall not receive a limited liability company interest in Borrower, (iv) Special Member, in its capacity as Special Member, may not bind Borrower and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower including, without limitation, the merger, consolidation or conversion of Borrower; provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower as Special Member, Special Member shall not be a member of Borrower, but Special Member may serve as an Independent Director of Borrower.

(e) The LLC Agreement shall further provide that, (i) upon the occurrence of any event that causes the Member to cease to be a member of Borrower to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower agree in writing (A) to continue Borrower and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower effective as of the occurrence of the event that terminated the continued membership of Member in Borrower, (ii) any action initiated by or brought against Member or Special Member under any Creditors' Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower and upon the occurrence of such an event, the business of Borrower shall continue without dissolution, and (iii) each of Member and Special Member waives any right it might have to agree in writing to dissolve or divide (whether pursuant to Section 18-217 of the Act or otherwise) Borrower upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors' Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower.

(f) Borrower hereby (i) opts out of the power to divide under Section 18-217 of the Act, which (absent such opt out) would enable it to divide into one or more newly formed limited liability companies with the dividing company continuing its existence or terminating its existence, as the case may be, and (ii) waives any other right that it might have to divide itself by a plan of division or otherwise.

Section 5.2 Independent Director.

(a) The organizational documents of Borrower (to the extent Borrower is a corporation or an Approved LLC) shall provide that at all times there shall be at least two (2) duly appointed members of its board of directors or managers, as applicable (each, an "**Independent Director**") reasonably satisfactory to Lender who each shall not have been at the

time of each such individual's initial appointment, and (I) shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as Independent Director, either (i) a shareholder (or other equity owner) of, or an officer, director (other than in its capacity as Independent Director), partner, member or employee of, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates, (ii) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, Borrower or any of its respective shareholders, partners, members, subsidiaries or affiliates, (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee supplier, customer or other Person, (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person or (v) the same person as any person acting in a similar capacity with respect to any Owner, and (II) shall be employed by, in good standing with and engaged by Borrower in connection with, in each case, any of the following: CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or any additional national providers of independent directors to the extent approved in writing by Lender and, if applicable the Rating Agencies.

(b) To the fullest extent permitted by law, including Section 18-1101(c) of the Act, the Independent Director shall consider only the interests of Borrower, including its respective creditors, in acting or otherwise voting on the matters related to taking a Bankruptcy Action. Except for duties to Borrower as set forth in the immediately preceding sentence (including duties to Borrower's member(s) or partner(s), as applicable, and Borrower's creditors solely to the extent of their respective economic interests in Borrower, but excluding (i) all other interests of such member(s) or partner(s), as applicable, (ii) the interests of other Affiliates of Borrower, and (iii) the interests of any group of Affiliates of which Borrower is a part), the Independent Director shall not have any fiduciary duties to such member(s) or partner(s), as applicable, of Borrower or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

(c) The organizational documents of Borrower shall further provide that (I) the board of directors or managers of Borrower and the constituent members of such entities (the "**Constituent Members**") shall not take any action which, under the terms of any organizational documents of Borrower requires the unanimous vote of (1) the board of directors or managers of Borrower or (2) the Constituent Members, unless at the time of such action there shall be at least two (2) Independent Directors engaged as provided by the terms hereof; (II) any resignation, removal or replacement of any Independent Director shall not be effective without two (2) Business Days' prior written notice to Lender accompanied by evidence that the replacement Independent Director satisfies the applicable terms and conditions hereof and of the applicable organizational documents; provided further that, no Independent Director may be removed or replaced other than for Cause; (III) to the fullest extent permitted by Applicable Law, including the limited liability company act of the State of Delaware or Maryland (as applicable), and notwithstanding any duty otherwise existing at law or in equity, the Independent Directors shall consider only the interests of the Constituent Members and Borrower (including Borrower's creditors) in acting or otherwise voting on the matters provided for herein and in Borrower's organizational documents (which such fiduciary duties to the Constituent Members and Borrower (including Borrower's creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in Borrower exclusive of (x) all other interests

(including, without limitation, all other interests of the Constituent Members), (y) the interests of other affiliates of the Constituent Members and Borrower and (z) the interests of any group of affiliates of which the Constituent Members or Borrower is a part)); (IV) other than as provided in subsection (III) above, the Independent Directors shall not have any fiduciary duties to any Constituent Members, any directors of Borrower or any other Person; (V) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under Applicable Law; and (VI) to the fullest extent permitted by Applicable Law, including Section 18-1101(e) of the Act, an Independent Director shall not be liable to Borrower, any Constituent Member or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.

Section 5.3 Change of Name, Identity or Structure.

Borrower shall not change (or permit to be changed) Borrower's (a) name, (b) identity (including its trade name or names), (c) principal place of business set forth on the first page of this Agreement or, (d) if not an individual, Borrower's corporate, partnership or other structure, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At Lender's request, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate, and representing and warranting that Borrower does business under no other trade name.

Section 5.4 Business and Operations.

Borrower will continue to engage in the businesses now conducted by it as and to the extent necessary for the ownership of the Collateral. Borrower will qualify to do business and will remain in good standing under the laws of the jurisdiction as and to the extent required for the ownership of the Collateral. Borrower shall not purchase or own any property or asset other than the Collateral and shall not engage in any other activity other than its ownership of the Collateral, or make any change in the scope or nature of its business objective, purposes or operations, or undertake or participate in activities other than the continuance of its present business or otherwise cease to own the Collateral.

Section 5.5 Dissolution.

Borrower shall not (i) engage in any dissolution (to the fullest extent permitted by law), liquidation or consolidation, division (whether pursuant to Section 18-217 of the Act or otherwise) or merger with or into any one or more other business entities, (ii) engage in any business activity not related to the ownership of the Collateral, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of Borrower except to the extent expressly permitted by the Loan Documents, or (iv) cause, permit or suffer Borrower to (A) dissolve, divide (whether pursuant to Section 18-217 of the Act or otherwise), wind up or liquidate or take any action, or omit to take any action, as a result of

which Borrower would be dissolved, divided (whether pursuant to Section 18-217 of the Act or otherwise), wound up or liquidated in whole or in part, or (B) amend, modify, waive or terminate the certificate of incorporation, bylaws, certificate of formation or operating agreement of Borrower, in each case without obtaining the prior consent of Lender.

ARTICLE VI

NO SALE OR ENCUMBRANCE

Section 6.1 No Sale/Encumbrance.

(a) Without Lender's prior written consent, Borrower shall not cause or permit (i) a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein or (B) the Collateral or any part thereof or any legal or beneficial interest therein, (ii) a Sale or Pledge of an interest in any Restricted Party, (iii) any change in Control of Borrower, Owner, Guarantor or any Affiliated Manager or any change in control of the day-to-day operations of the Property, (iv) convert the Property into a condominium form of ownership or (v) enter into or subject the Property or the Collateral to a PACE Loan (collectively, a "**Prohibited Transfer**"); provided, however, (i) Leases of space in the Improvements complying with the provisions of Section 4.14, (ii) any Permitted Encumbrance, (iii) any Permitted Equity Transfer, and (iv) any Permitted Property Transfer shall not constitute a Prohibited Transfer.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein (A) Owner agrees to sell the Property or any part thereof for a price to be paid in installments or (B) Borrower agrees to sell the Collateral or any part thereof for a price to be paid in installments; (ii) an agreement by Owner leasing all or a substantial part of the Property for other than actual occupancy by a Tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Owner's right, title and interest in and to (A) any Leases or any Rents or (B) any REA or any Material Agreements; (iii) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by Owner or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (iv) any other action instituted by (or at the behest of) Borrower, Owner or its affiliates or consented to or acquiesced in by Borrower, Owner or its affiliates which results in a termination of an REA or any Material Agreements; (v) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (vi) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (vii) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (viii) if a Restricted Party is a limited liability company, the division of any assets and liabilities of such entity amongst one or more new or existing entities (whether pursuant to Section 18-217 of the Act or otherwise); (ix) if a Restricted Party is a trust or nominee trust, any

merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (x) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with Section 4.15 hereof.

Section 6.2 Permitted Equity Transfers.

Notwithstanding the restrictions contained in this Article VI, the following equity transfers (expressly excluding any transfer of the Pledged Equity) shall be permitted without Lender's consent (each, a "**Permitted Equity Transfer**"): (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a Restricted Party or any member, partner or shareholder of a Restricted Party, (b) the transfer (but not the pledge), in one or a series of transactions, of the stock, partnership interests or membership interests (as the case may be) in a Restricted Party (including, without limitation, transfers for estate planning purposes), and (c) the sale, transfer or issuance of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange (provided, that, the foregoing provisions of clause (c) shall not be deemed to waive, qualify or otherwise limit Borrower's obligation to comply (or to cause the compliance with) the other covenants set forth herein and in the other Loan Documents (including, without limitation, the covenants contained herein relating to ERISA matters)); provided, further, that, with respect only to the transfers listed in clauses (a) and/or (b) above, (A) (x) Lender shall receive written notice of any transfers pursuant to clause (a) above within ten (10) days of such transfer and (y) Lender shall receive not less than thirty (30) days prior written notice of such transfers in connection with any transfer pursuant to clause (b) above, (B) no such transfers shall result in a change in Control of any Borrower, Owner, Sponsor, Guarantor or Affiliated Manager, (C) after giving effect to such transfers, (I) Sponsor shall own at least a 75% direct or indirect equity ownership interest in each Borrower and Owner; (II) Sponsor Family Group shall own at least a 75% direct or indirect equity ownership interest in each Borrower and Owner (including, without limitation, Sponsor's equity ownership set forth in the foregoing clause (I)); and (III) Sponsor shall (x) Control each Borrower and (y) control the day-to-day operation of the Property, (D) after giving effect to such transfers, the Property shall continue to be managed by Affiliated Manager or a New Manager approved in accordance with the applicable terms and conditions hereof, (E) in the case of the transfer of any direct equity ownership interests in any Borrower, such transfers shall be conditioned upon continued compliance with the relevant provisions of Article V hereof, (F) in the case of (1) the transfer of the management of the Property to a new Affiliated Manager in accordance with the applicable terms and conditions hereof, or (2) the transfer of any direct or indirect equity ownership interests in any Restricted Party that results in any Person and its Affiliates owning in excess of forty-nine percent (49%) of the direct or indirect equity ownership interests in any Borrower that did not own the same on the date hereof or at the time of the delivery of any New Non-Consolidation Opinion prior to such transfer, such transfers shall be conditioned upon delivery to Lender of a New Non-Consolidation Opinion addressing such transfer, and (G) such transfers shall be conditioned upon each Borrower's ability to, after giving effect to the equity transfer in question, (I) remake the representations contained herein relating to ERISA, OFAC and Patriot Act matters (and, upon Lender's request, Borrower shall deliver to Lender (x) an Officer's Certificate containing such updated representations effective as of the date of the consummation of the applicable equity transfer and (y) searches, acceptable to Lender, for any

Person owning, directly or indirectly, ten percent (10%) or more of the interests in any Borrower as a result of such transfer) and (II) continue to comply with the covenants contained herein relating to ERISA OFAC and Patriot Act matters. Upon request from Lender, Borrower shall promptly provide Lender a revised version of the organizational chart delivered to Lender in connection with the Loan reflecting any equity transfer consummated in accordance with this Section 6.2. Notwithstanding anything contained herein to the contrary, in the case of a transfer of any direct or indirect equity ownership interests in any Restricted Party that results in any Person and its Affiliates owning in excess of forty-nine percent (49%) of the direct or indirect equity ownership interests in any Borrower that did not own the same on the date hereof, Lender shall have consented in writing to such transfer.

Furthermore, in the event of (x) a death or an incompetency of any Guarantor or (y) if any Permitted Equity Transfer will result in Guarantor no longer owning a direct or indirect equity interest in any Borrower, the same shall constitute an Event of Default under this Agreement; provided, however that it shall not be an Event of Default hereunder if Guarantor shall be replaced with an Acceptable Replacement Guarantor. Such Acceptable Replacement Guarantor shall execute and deliver to Lender a recourse guaranty and an environmental indemnity in form and substance identical to the Guaranty and Environmental Indemnity, respectively, with such changes to each of the foregoing as may be reasonably required by Lender (i) in the case of a transfer described in clause (x) above, within thirty (30) days after the date of such transfer or (ii) in the case of a Permitted Equity Transfer described in clause (y) above, on or prior to the date of such Permitted Equity Transfer, pursuant to which, in each case, such replacement guarantor(s) agree(s) to be liable under each such guaranty of recourse obligations and environmental indemnity agreement from and after the date of such Permitted Equity Transfer; whereupon the Guarantor being replaced shall be released from any further liability under the Loan Documents to which it is a party from and after the date of such Transfer and such replacement guarantor(s) shall be a “Guarantor” for all purposes from and after the date of such Permitted Equity Transfer.

Section 6.3 Permitted Property Transfers (Assumptions).

Notwithstanding the foregoing provisions of this Article VI, following the date which is twelve (12) months from the Closing Date, Lender shall not unreasonably withhold consent to the transfer of the Property and the Collateral in its entirety to, and the related assumptions of the Loan and the Senior Loan by, any Person (a “**Transferee**”) provided that, with respect to each such transfer, each of the following terms and conditions are satisfied (each, a “**Permitted Property Transfer**”):

- (a) no Default or Event of Default has occurred and is continuing;
- (b) Borrower shall have (i) delivered written notice to Lender of the terms of such prospective transfer not less than sixty (60) days before the date on which such transfer is scheduled to close and, concurrently therewith, all such information concerning the proposed Transferee as Lender shall reasonably require and (ii) paid to Lender a non-refundable processing fee in the amount of \$5,000. Lender shall have the right to approve or disapprove the proposed transfer based on its then current underwriting and credit requirements for similar loans secured by similar properties which loans are sold in the secondary market, such approval not to

be unreasonably withheld. In determining whether to give or withhold its approval of the proposed transfer, Lender shall consider the experience and track record of Transferee and its principals in owning and operating facilities similar to the Property, the financial strength of Transferee and its principals, the general business standing of Transferee and its principals and Transferee's and its principals' relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable and, if given, may be given subject to such conditions as Lender may deem reasonably appropriate;

(c) Borrower shall have paid to Lender, concurrently with the closing of such prospective transfer, (i) a non-refundable assumption fee in an amount equal to one percent (1%) of the then outstanding principal balance of the Loan, (ii) all out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred by Lender in connection therewith and (iii) all fees, costs and expenses of all third parties and the Rating Agencies incurred in connection therewith;

(d) The sole equity owner of Transferee assumes and agrees to pay the Debt as and when due subject to the provisions of Article XIII hereof and, prior to or concurrently with the closing of such transfer, Transferee and its constituent partners, members, shareholders, affiliates or sponsors as Lender may require, shall execute, without any cost or expense to Lender, such documents and agreements reasonably required by Lender to evidence and effectuate said assumption;

(e) Borrower, Owner and Transferee, without any cost to Lender, shall furnish any information requested by Lender for the preparation of, and shall authorize Lender to file, new financing statements and financing statement amendments and other documents to the fullest extent permitted by Applicable Law, and shall execute any additional documents reasonably requested by Lender;

(f) Borrower shall have delivered to Lender, at Borrower's cost and expense, such endorsements to the Owner's Title Policy insuring that fee simple or leasehold title to the Property, as applicable, is vested in Transferee (subject to Permitted Encumbrances), a new UCC insurance policy in the same form and substance as the UCC Insurance Policy delivered to Lender on the Closing Date, hazard insurance endorsements or certificates and other similar materials as Lender requires at the time of the transfer, all in form and substance satisfactory to Lender;

(g) Transferee shall have furnished to Lender all appropriate documents evidencing the organization and good standing of Transferee and its sole equity owner, and the qualification of the signers to execute the assumption of the Debt, certified copies of all organizational and formation documents of Transferee and including any entities which are partners, members or shareholders of Transferee. Transferee shall comply with the covenants set forth in Article V (provided, however, such Transferee and its sole equity member shall not be a Delaware Statutory Trust, a tenancy-in-common, a Crowdfunded Person, or any Person who is (i)

Controlled (directly or indirectly) by one or more of the foregoing and/or (ii) more than 49% owned (directly or indirectly) by one or more of the foregoing);

(h) Transferee shall assume Owner's obligations under any Management Agreement or provide a new management agreement with a New Manager which meets with the requirements of the Consent of Manager and Section 4.15;

(i) Transferee shall furnish to Lender a New Non-Consolidation Opinion and an opinion of counsel satisfactory to Lender and its counsel (A) that Transferee's formation documents provide for the matters described in subparagraph (g) above, (B) that the assumption of the Debt has been duly authorized, executed and delivered, and that the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee in accordance with their terms, (C) that Transferee and any entity which is a controlling stockholder, member or general partner of Transferee, have been duly organized, and are in existence and good standing, and (D) with respect to such other matters as Lender may reasonably request;

(j) intentionally omitted;

(k) Transferee and its sole equity owner shall be Controlled by a Person who (x) is a Qualified Transferee with a minimum ownership interest in the Transferee reasonably acceptable to Lender and (y) whose identity, experience, financial condition and creditworthiness, including net worth and liquidity, is reasonably acceptable to Lender and Lender shall conduct such customary searches (including credit, negative news, OFAC, litigation, judgment, lien and bankruptcy searches) as Lender may reasonably require with respect to (A) each Acceptable Replacement Guarantor, (B) Transferee, (C) any Person that Controls Transferee or owns an equity interest in Transferee which equals or exceeds ten percent (10%) and (D) any other Person reasonably required by Lender in order for Lender to fulfill its then-current compliance guidelines;

(l) Each Acceptable Replacement Guarantor shall execute and deliver to Lender a recourse guaranty and an environmental indemnity in form and substance identical to the Guaranty and Environmental Indemnity, respectively, with such changes to each of the foregoing as may be reasonably required by Lender;

(m) Transferee shall deposit with Lender (or Senior Lender) such new or increased Reserve Funds as Lender (or Senior Lender) may require and the Loan Documents (or Senior Loan Documents) shall be correspondingly amended to reflect any such changes in the Reserve Funds;

(n) the proposed transfer shall not constitute or cause a default under the Senior Loan;

(o) Borrower's and Owner's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the applicable terms and conditions of this Section 6.3;

(p) Borrower shall deliver evidence in form and substance satisfactory to Lender, that simultaneously with any Permitted Property Transfer, Owner shall have complied with the terms and provisions of Section 6.3 of the Senior Loan Agreement; and

(q) If the Senior Loan is outstanding at the time of the Transfer and Assumption, the proposed Transfer and Assumption shall not constitute or cause a default under the Senior Loan Documents.

Notwithstanding the foregoing or anything herein to the contrary, neither Owner nor Borrower may exercise its rights pursuant to this Section 6.3 during the period commencing on the date that is sixty (60) days prior to the date of any intended Securitization of the Loan or the Senior Loan and ending on the date that is sixty (60) days after the date of such Securitization of the Loan or the Senior Loan, as applicable.

Section 6.4 Lender's Rights.

Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon (a) a modification of the terms hereof and on assumption of this Agreement and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) payment of a transfer fee of one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) intentionally omitted, (d) the proposed transferee's continued compliance with the covenants set forth in this Agreement, including, without limitation, the covenants in Article V hereof, (e) receipt of a New Non-Consolidation Opinion with respect to the Prohibited Transfer, and/or (f) such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer without Lender's consent. This provision shall apply to every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

ARTICLE VII

INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 7.1 Insurance.

(a) Borrower shall cause Owner to:

(i) obtain and maintain, at all times during the term of the Loan, the Policies required under the Senior Loan Agreement; and

(ii) otherwise satisfy all covenants related thereto as provided in the Senior Loan Agreement. Subject to applicable law and the prior rights of Senior Lender under the Senior Loan and to the extent not inconsistent with the terms of the Senior Loan Documents, Borrower shall cause Lender to be named as certificate holder on all property policies and as an additional insured on all liability policies on forms acceptable to

Lender. Borrower shall not permit the Policies to be canceled or modified without at least thirty (30) days' notice to Lender. Borrower shall provide Lender with evidence of all such insurance required hereunder and with the other related notices required under the Senior Loan Documents, in each case, on or before the date on which Owner is required to provide the same to Senior Lender. If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property and the Collateral, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Loan Documents and shall bear interest at the Default Rate.

(b) Upon repayment in full of the Senior Loan, the provisions of Section 7.1 of the Senior Loan Agreement shall be deemed incorporated into this Agreement in their entirety (with such changes as are appropriate to reflect the Loan and the Collateral).

Section 7.2 Casualty.

(a) If any portion of the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the affected Individual Property as nearly as possible to the condition the Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender (a "**Restoration**") and otherwise in accordance with Section 7.4 of the Senior Loan Agreement. Borrower shall, or shall cause Owner to, pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve any final settlement) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than the Restoration Threshold (as defined in the Senior Loan Agreement) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation. Any insurance proceeds in connection with any Casualty (whether or not Lender elects to settle and adjust the claim or Borrower causes Owner settles such claim) shall be due and payable solely to Senior Lender and held by Senior Lender in accordance with the terms of the Senior Loan Agreement. The expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt, shall be secured by the Loan Documents and shall be reimbursed by Borrower to Lender upon demand. Borrower hereby releases Lender from any and all liability with respect to the settlement and adjustment by Lender of any claims in respect of any Casualty. Notwithstanding any Casualty, Borrower shall continue to pay the Debt at the time and in the manner provided for in this Agreement, the Note and the other Loan Documents.

(b) Notwithstanding anything in this Section 7.2 to the contrary, the provisions of this Section 7.2 are subject to the rights of Senior Lender under the Senior Loan Documents.

Section 7.3 Condemnation.

(a) Borrower shall promptly give Lender notice of the actual or threatened commencement (in writing) of any proceeding for the Condemnation of any Property (or any portion thereof) of which Borrower or Owner has knowledge and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments reasonably requested by it to permit such participation. Borrower shall cause Owner to, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall cause Owner to promptly commence and diligently prosecute the Restoration of the applicable Individual Property and otherwise comply with the provisions of Section 7.4 of the Senior Loan Agreement. If the applicable Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

(b) Notwithstanding anything in this Section 7.3 to the contrary, the provisions of this Section 7.3 are subject to the rights of Senior Lender under the Senior Loan Documents.

Section 7.4 Restoration.

(a) Borrower shall (or shall cause Owner to) deliver to Lender all budgets, reports, plans, specifications, documents and other materials that are delivered to Senior Lender under the Senior Loan Agreement in connection with the Restoration of the Property after a Casualty or Condemnation. Borrower shall cause Owner to comply with the terms and conditions of the Senior Loan Documents relating to Restoration, as applicable. Notwithstanding anything to the contrary contained in this Agreement, if at any time and for any reason any of the Senior Loan restoration provisions cease to exist or are waived in any material respect (it being agreed that the exercise of discretion by Senior Lender or a servicer under the Senior Loan Documents, as contemplated in the Senior Loan Agreement, shall not be deemed to constitute a waiver) (such provisions, the ***“Waived Restoration Provisions”***), to the extent permitted to do so pursuant to the Senior Loan Documents (in each case, if applicable), Borrower shall promptly (i) notify Lender of the same, (ii) execute any amendments to this Agreement and/or the Loan Documents implementing the Waived Restoration Provisions as may be reasonably required by Lender (provided such amendments are substantially similar to, impose no greater restrictions or limitations on Owner’s or Borrower’s right to restore the Property than, and impose no greater obligations than, the provisions set forth in the Senior Loan Agreement relating to the same) and

shall cause Owner to acknowledge and agree to the same and (iii) remit to Lender (and shall cause Owner, as applicable, to remit to Lender) any Net Proceeds related to the Waived Restoration Provisions.

(b) In the event that the Senior Loan shall be paid in full, the provisions of Section 7.4 of the Senior Loan Agreement shall be deemed incorporated into this Agreement in their entirety, provided that all references therein to Lender shall be deemed to refer to Lender hereunder, and not to Senior Lender.

(c) If, pursuant to the terms of the Senior Loan Documents, Owner is ever entitled to receive any portion of any Net Proceeds (i.e., such amounts are not required to be used for Restoration or to be applied to repayment of the Senior Loan), Borrower shall cause such portion of such Net Proceeds to be deposited with Lender and all such amounts shall then be applied to the payment of the Debt in accordance with the provisions of this Agreement.

Section 7.5 Rights of Lender.

For the purposes of this Article VII, Borrower shall obtain the approval of Lender for each matter requiring the approval of Senior Lender under the provisions of the Senior Loan Agreement, with each reference in any such provisions to the "Loan" to include the Senior Loan and the Loan. If the Senior Lender does not require the deposit by the Owner of the costs of a Restoration in excess of the net amount of the Proceeds or the Award to be made available pursuant to the terms of the Senior Loan Agreement, Lender shall have the right to demand that Borrower make a deposit of such amount in accordance with the terms of such Section (as if each reference therein to "Borrower" and "Lender" referred to Borrower and Lender, respectively).

ARTICLE VIII

CASH MANAGEMENT AND RESERVE FUNDS

Section 8.1 Cash Management Arrangements. Borrower shall cause Owner to cause all Rents to be deposited and applied in accordance with the Senior Loan Documents and otherwise cause Owner to comply with all of its obligations under Section 8.1 of the Senior Loan Agreement and all terms of the Senior Loan Clearing Account Agreement and the Senior Loan Cash Management Agreement. Borrower shall cause Owner to comply with the Senior Loan Cash Management Provisions and shall not, without Lender's prior consent, amend, restate, replace and/or otherwise modify the same. If requested by Lender, Borrower will promptly provide evidence reasonably acceptable to Lender of its compliance with the foregoing. All funds deposited by the Senior Loan Cash Management Bank into the Mezzanine Cash Collateral Account (as defined below) shall be deemed to be a distribution from Owner to Borrower and shall be applied and disbursed in accordance with this Agreement. Lender may also establish subaccounts of the Mezzanine Cash Collateral Account which shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts) (such subaccounts are referred to herein as "**Mezzanine Loan Accounts**"). The Mezzanine Cash Collateral Account and all other Mezzanine Loan Accounts will be under the sole control and dominion of

Lender, and Borrower shall have no right of withdrawal therefrom. Borrower shall pay for all expenses of opening and maintaining all of the above accounts.

Section 8.2 Mezzanine Loan Reserve Funds.

(a) Notwithstanding anything to the contrary in this Agreement, if, at any time during the term of the Loan, Senior Lender is not requiring Owner to make the required deposits and reserves required under Article VIII of the Senior Loan Agreement for any reason, then Lender shall have the right, at its option, to require Borrower to make such required deposits to Lender, in which case such deposits shall be made by Borrower and disbursed by Lender substantially in accordance with the provisions of such applicable sections of the Senior Loan Agreement, and Borrower shall, or shall cause Owner to, establish and pledge to Lender the deposits, reserves and accounts relating thereto to and in favor of Lender as and to the extent required by Lender and execute any amendments to this Agreement and/or the other Loan Documents to effectuate the same. Borrower's failure to: (A) promptly provide Lender with notice of Senior Lender's waiver of any requirement to maintain any of the Senior Loan Subaccounts, and/or (B) upon receipt by Borrower or Owner, promptly remit to Lender (or cause Owner to remit to Lender) (x) any Senior Loan Subaccounts remaining in the accounts in which the waived Reserves are held only if such accounts are no longer being held by Senior Lender or (y) all Senior Loan Subaccounts if the Senior Loan has been repaid in full, shall, following ten (10) Business Days' written notice, be an Event of Default hereunder.

(b) Borrower hereby grants to Lender a first-priority perfected security interest in the Mezzanine Cash Collateral Account, any Mezzanine Loan Accounts and all sums now or hereafter deposited therein (the "**Mezzanine Loan Reserve Funds**") as additional security for payment of the Debt. The Mezzanine Loan Reserve Funds shall be under the sole dominion, control and discretion of Lender, its authorized agents or designees, subject to the terms hereof, and Borrower shall have no right of withdrawal with respect to any Reserve Funds except with the prior written consent of Lender or as otherwise provided herein. The Mezzanine Loan Reserve Funds shall not constitute a trust fund and may be commingled with other monies held by Lender.

(c) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Mezzanine Loan Reserve Funds or permit any lien to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall have the right to file a financing statement or statements under the UCC in connection with any of the Mezzanine Loan Reserve Funds with respect thereto in the form required to properly perfect Lender's security interest therein. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any Mezzanine Loan Reserve Funds.

(d) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon the occurrence and during the continuance of an Event of Default, without

notice from Lender or Servicer (i) Borrower shall have no rights in respect of the Mezzanine Loan Reserve Funds and (ii) Lender shall have all rights and remedies with respect to the Accounts and the amounts on deposit therein and the Mezzanine Loan Reserve Funds as described in this Agreement, in addition to all of the rights and remedies available to a secured party under the UCC, and, notwithstanding anything to the contrary contained in this Agreement, may apply the Mezzanine Loan Reserve Funds as Lender determines in its sole discretion including, but not limited to, payment of the Debt.

(e) The insufficiency of Mezzanine Loan Reserve Funds on deposit with Lender shall not absolve Borrower of the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(f) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Mezzanine Loan Reserve Funds, the sums deposited therein or the performance of the obligations for which the Mezzanine Loan Reserve Funds were established, except to the extent arising from the gross negligence or willful misconduct of Lender, its agents or employees. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Mezzanine Loan Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(g) Interest accrued, if any, on the Mezzanine Loan Reserve Funds shall not be required to be remitted to any Mezzanine Loan Accounts and may instead be retained by Lender.

(h) Borrower acknowledges and agrees that it solely shall be, and shall at all times remain, liable to Lender or Servicer for all fees, charges, costs and expenses in connection with the Mezzanine Loan Reserve Funds, this Agreement and the enforcement hereof, including, without limitation, any monthly or annual fees or charges as may be assessed by Lender or Servicer in connection with the administration of the Mezzanine Loan Accounts and the Mezzanine Loan Reserve Funds and the reasonable fees and expenses of legal counsel to Lender and Servicer as needed to enforce, protect or preserve the rights and remedies of Lender and/or Servicer under this Agreement.

Section 8.3 Mezzanine Cash Collateral Account.

(a) If a Cash Trap Event Period (as defined in the Senior Loan Agreement) shall be continuing, all Available Cash (as defined in the Senior Loan Agreement) not required to be deposited in the Cash Collateral Subaccount (as defined in the Senior Loan Agreement) in accordance with the Senior Loan Documents shall be paid to Lender, which amounts shall be transferred by Lender into an Eligible Account at an Eligible Institution selected by Lender and controlled by Lender (the "**Mezzanine Cash Collateral Account**") to be held by Lender as cash collateral for the Debt. Amounts deposited pursuant to this Section 8.3 are referred to herein as the "**Mezzanine Cash Collateral Funds**". Borrower shall maintain a minimum account balance of Five Thousand and No/100 Dollars (\$5,000.00) in the Mezzanine Cash Collateral Account at

all times. Any Mezzanine Cash Collateral Funds on deposit in the Mezzanine Cash Collateral Account not previously disbursed or applied shall, subject to minimum deposit requirements, upon the termination of such Cash Trap Event Period, be disbursed to Borrower. Notwithstanding the foregoing, Lender shall have the right, but not the obligation, at any time during the continuance of an Event of Default, in its sole and absolute discretion to apply any and all Mezzanine Cash Collateral Funds then on deposit in the Mezzanine Cash Collateral Account to the Debt or other obligations of Borrower under the Loan Documents, in such order and in such manner as Lender shall elect in its sole and absolute discretion, including to make a prepayment of principal (together with the applicable Yield Maintenance Premium and any Interest Shortfall, if any, applicable thereto) or any other amounts due hereunder. Borrower hereby expressly authorizes Lender to issue notices of any Event of Default or Cash Trap Event Period to Senior Lender. Notwithstanding anything in this Article VIII to the contrary, upon the indefeasible repayment of the Debt in full, any funds remaining on deposit in any Mezzanine Loan Reserve Account, or any other Account of Lender's, shall be transferred to an account designated in writing by Borrower.

Section 8.4 Property Cash Flow Allocation.

(a) On each Monthly Payment Date, except during the continuance of an Event of Default, all funds deposited into the Senior Loan Cash Management Account for payment to or on behalf of Lender during the immediately preceding Interest Accrual Period shall be applied on (x) such Monthly Payment Date and (y) during the continuance of a Cash Trap Event Period, the fifteenth (15th) day of such month (unless such day is not a Business Day in which case such funds shall be applied on the succeeding Business Day) in the following order of priority:

(i) First, to Lender, funds sufficient to pay the Monthly Debt Service Payment Amount, applied first to the payment of interest computed at the Interest Rate with the remainder applied to the reduction of the outstanding principal balance;

(ii) Second, to Lender, funds for purposes of funding any required Mezzanine Loan Reserve Accounts, if applicable;

(iii) Third, to Lender, of any other amounts then due and payable under the Loan Documents; and

(iv) Lastly, all amounts remaining after payment of the amounts set forth in clauses (i) through (iii) above (the "**Available Cash**"), shall be disbursed as follows:

(A) during the continuance of a Cash Trap Event Period, into the Mezzanine Cash Collateral Subaccount to be held or disbursed in accordance with Section 8.3; and

(B) provided that no Cash Trap Event Period exists, to Borrower.

(b) The failure of Borrower to make all of the payments required under clauses (i) through (iii) of Section 8.4(a) hereof in full on each Monthly Payment Date shall constitute an Event of Default under this Agreement.

(c) Notwithstanding anything to the contrary contained in this Article VIII, upon the occurrence of an Event of Default, Lender, at its option, may apply any Rents and other proceeds of repayment then in the possession of Lender or Servicer (including any Mezzanine Loan Reserve Funds on deposit in any Mezzanine Loan Reserve Account) to the payment of the Debt in such order, proportion and priority as Lender may determine in its sole and absolute discretion. Lender's right to withdraw and apply any of the foregoing funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

Section 8.5 Payments Made to Lender on Behalf of Owner.

Notwithstanding anything to the contrary contained in this Agreement, the other Loan Documents and/or the Senior Loan Documents, the parties hereto acknowledge and agree that, as to any clause or provision contained in this Agreement, the other Loan Documents and/or the Senior Loan Documents to the effect that payments, distributions or other similar effect are to be made by Owner or Senior Lender to Lender or applied to the Loan, such clause or provision shall be deemed to mean, and shall be construed as meaning, that Senior Lender shall pay to Owner, and Owner shall then immediately distribute to Borrower, pursuant to and in accordance with the organizational documents of Owner and Applicable Law, which distribution shall be immediately payable by Borrower to Lender, and any such clause or provision shall not be construed as meaning that Owner is acting on behalf of, holding out its credit for, or paying the obligations of, Borrower, directly or in any other manner that would violate any of the single purpose entity covenants contained in this Agreement or other similar covenants contained in Borrower's organizational documents or Owner's organizational documents, respectively.

ARTICLE IX

INTENTIONALLY OMITTED

ARTICLE X

EVENTS OF DEFAULT; REMEDIES

Section 10.1 Event of Default.

The occurrence of any one or more of the following events shall constitute an “**Event of Default**”:

(a) if Borrower shall fail to (i) pay when due (A) any sums which by the express terms of this Agreement and the other Loan Documents require immediate or prompt payment without any grace period, (B) any monthly Debt Service and any amount required to be paid into the Mezzanine Loan Reserve Funds, or (C) any sums which are payable on the Maturity Date, or (ii) pay within five (5) days when due any other sums payable under this Agreement or any of the other Loan Documents;

(b) if any of the Taxes or Other Charges are not paid when the same are due and payable except to the extent (i) sums sufficient to pay such Taxes and Other Charges have been

deposited with Senior Lender in accordance with the terms of the Senior Loan Agreement and (ii) Senior Lender's access to such sums is not restricted or constrained in any manner;

(c) (i) if the Policies are not kept in full force and effect or (ii) if evidence of the Policies being in full force and effect is not delivered to Lender as provided in Section 7.1 hereof and such failure continues for ten (10) days after receipt of written notice from Lender;

(d) if any of the representations or covenants contained in Article V hereof are breached or violated (provided however, that any such breach of Article 5 shall not constitute an Event of Default if (i) such breach is inadvertent, immaterial and non-recurring, (ii) such breach is curable and Borrower shall cure such breach within ten (10) Business Days after such breach occurs, (iii) such breach does not result in the substantive consolidation of Borrower with another Person, (iv) such breach is not reasonably likely to have a Material Adverse Effect, and (v) Borrower promptly delivers to Lender, upon request, a New Non-Consolidation Opinion to the effect that such breach shall not in any way impair, negate or amend the opinions rendered in the non-consolidation opinion delivered to Lender on the date hereof, which opinion or modification and the counsel delivering such opinion and/or modification shall be acceptable to Lender in its reasonable discretion and acceptable to the Rating Agencies);

(e) a Sale or Pledge occurs that is not a Permitted Transfer;

(f) if any representation or warranty of, or with respect to, Borrower, Owner, Sponsor, Guarantor or any member, general partner, principal or beneficial owner of any of the foregoing, made herein, in the Guaranty or in the Environmental Indemnity or in any other guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material adverse respect when made;

(g) if (i) any Borrower, Owner, Sponsor or Guarantor shall commence any case, proceeding or other action (A) under any Creditors' Rights Laws seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Borrower, Owner or any managing member or general partner of any Borrower, Owner, Sponsor or Guarantor shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against any Borrower or any managing member or general partner of any Borrower, Owner, Sponsor or Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; (iii) there shall be commenced against any Borrower, Owner, Sponsor or Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (iv) any Borrower, Owner, Sponsor or Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Borrower, Owner, Sponsor or

Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(h) if Borrower or Owner shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property or the Collateral whether it be superior or junior in lien to the Mortgage or the Security Instrument, as applicable;

(i) subject to Borrower's right to contest or to cause Owner to contest pursuant to Sections 4.5(b) and 4.16(b) hereof, if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for any Taxes not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(j) if any federal tax lien is filed against Borrower, Owner, Sponsor, Guarantor, the Collateral or the Property and same is not discharged of record (by payment, bonding or otherwise) within thirty (30) days after same is filed;

(k) if Borrower shall fail to comply with the covenants in Article XV hereof or otherwise fails to deliver to Lender, within ten (10) days after request by Lender, the estoppel certificates required by Section 4.13(a) or (c) hereof;

(l) if any default occurs under any guaranty or indemnity executed in connection herewith (including, without limitation, the Environmental Indemnity and/or the Guaranty) and such default continues after the expiration of applicable grace periods, if any;

(m) if any of the assumptions contained in the Non-Consolidation Opinion, or in any New Non-Consolidation Opinion are untrue or shall become untrue in any material respect;

(n) if Borrower shall fail to deliver to Lender within thirty (30) days after request by Lender any Required Financial Item;

(o) if Owner defaults under the Management Agreement beyond the expiration of applicable notice and grace periods, if any, thereunder or if the Management Agreement is canceled, terminated or surrendered or expires pursuant to its terms, unless in such case Borrower shall cause Owner to enter into a new management agreement with a Qualified Manager in accordance with the applicable terms and provisions hereof;

(p) if any representation and/or covenant herein relating to ERISA matters is breached and such breach results in a Material Adverse Effect;

(q) if (i) Borrower shall fail (beyond any applicable notice or grace period) to pay or cause to be paid any charges payable under any REA or Material Agreements as and when payable thereunder, (ii) Borrower or Owner defaults under any REA or Material Agreements beyond the expiration of applicable notice and grace periods, if any, thereunder, (iii) any REA or Material Agreements are amended, supplemented, replaced, restated or otherwise modified without Lender's prior written consent or if Borrower consents, or permits Owner to consent, to a transfer of any party's interest thereunder without Lender's prior written consent, or (iv) any

REA or Material Agreements and/or the estate created thereunder is canceled, rejected, terminated, surrendered or expires pursuant to its terms, unless in such case Borrower or Owner, as applicable, enters into a replacement thereof in accordance with the applicable terms and provisions hereof;

(r) if Borrower shall continue to be in default under any term, covenant or condition of this Agreement not specified in subsections (a) through (p) above or not otherwise specifically specified as an Event of Default herein, (i) for more than ten (10) days after notice from Lender, in the case of any default which can be cured by the payment of a sum of money or (ii) for thirty (30) days after notice from Lender, in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days (subject to further extension by Lender, in Lender's sole discretion);

(s) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such Loan Documents, whether as to Borrower or the Collateral, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt; and/or

(t) any Event of Default (as defined in the Senior Loan Documents) occurs, or any other event shall occur or condition shall exist, if the effect of such event or condition is to accelerate or permit Senior Lender to accelerate the maturity of all or any portion of the Senior Loan.

Section 10.2 Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 10.1(g) hereof with respect to Borrower only) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to the Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in the Collateral, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Collateral, including, without limitation, all rights or remedies available at law or in equity. Upon any Event of Default described in Section 10.1(g) hereof (with respect to Borrower only), the Debt and all other obligations of Borrower under the Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in the other Loan Documents to the contrary notwithstanding.

(b) Upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under the Loan Documents executed and delivered by, or applicable to, Borrower or at

law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under the Loan Documents with respect to the Collateral. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by Applicable Law, without impairing or otherwise affecting Lender's other rights and remedies permitted by Applicable Law, equity or contract or as set forth herein or in the other Loan Documents. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, pledge agreements, security instruments and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after Lender's request, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after Lender has given Borrower notice of Lender's intent to exercise its rights under such power. Borrower shall not be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such

representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(e) Any amounts recovered from the Collateral or any other collateral for the Loan after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default hereunder, make, do or perform any obligation of Borrower hereunder in such manner and to such extent as Lender may deem necessary. Lender is authorized to appear in, defend, or bring any action or proceeding to protect its interest in the Collateral for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by Applicable Law), with interest as provided in this Section, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred through and including the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

ARTICLE XI

SECONDARY MARKET

Section 11.1 Securitization.

(a) Lender shall have the right (i) to sell or otherwise transfer the Loan or any portion thereof as a whole loan, (ii) to sell participation interests in the Loan or (iii) to securitize the Loan or any portion thereof in a single asset securitization or a pooled loan securitization. The transaction referred to in clauses (i), (ii) and (iii) above shall hereinafter be referred to collectively as “**Secondary Market Transactions**” and the transactions referred to in clause (iii) shall hereinafter be referred to as a “**Securitization**”. Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as “**Securities**”.

(b) If requested by Lender, Borrower shall assist Lender in satisfying the market standards to which Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with any Secondary Market Transactions, at Borrower's reasonable cost and expense (subject to Section 11.2(h) hereof), including, without limitation, to:

(i) (A) provide updated financial and other information with respect to the Property, the business operated at the Property, the Collateral, Borrower, Owner,

Guarantor, Sponsor and Manager, (B) provide updated budgets relating to the Property and (C) cooperate with Lender in obtaining updated appraisals, market studies, environmental reviews (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations of the Property (the "**Updated Information**"), together, if customary, with appropriate verification of the Updated Information through letters of auditors or opinions of counsel acceptable to Lender and the Rating Agencies;

(ii) provide opinions of counsel, which may be relied upon by Lender, the Rating Agencies and their respective counsel, agents and representatives, as to non-consolidation, matters of Delaware (or Maryland, as applicable) and federal bankruptcy law relating to limited liability companies or any other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Property, the Collateral, Borrower and Borrower's Affiliates, which counsel and opinions shall be satisfactory in form and substance to Lender and the Rating Agencies;

(iii) provide updated, as of the closing date of the Secondary Market Transaction, representations and warranties made in the Loan Documents and such additional representations and warranties as the Rating Agencies may require; and

(iv) execute such amendments to the Loan Documents and Borrower's organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies or otherwise to effect the Securitization including, without limitation, bifurcation of the Loan into two or more components and/or separate notes and/or creating a senior/subordinate note structure; provided, however, that Borrower shall not be required to modify or amend any Loan Document if such modification or amendment would (x) change the interest rate, the stated maturity or the amortization of principal set forth in the Note, except in connection with a bifurcation of the Loan, which may result in varying fixed interest rates and amortization schedules, but which shall have the same initial weighted average coupon of the original Note, (y) modify any other material economic term of the Loan, or (z) materially increase any of Borrower's or Guarantor's obligations or materially decrease any of Borrower's or Guarantor's rights under the Loan.

(c) If, at the time one or more Disclosure Documents are being prepared for a Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Property alone or the Property and Related Properties collectively, will be a Significant Obligor for purposes of such Securitization, Borrower shall furnish (or cause to be furnished) to Lender upon request (i) the selected financial data or, if applicable, net operating income, described in Item 1112(b)(1) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan (or portion of the Loan included in such Securitization) and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in such Securitization or (ii) the financial statements described in Item 1112(b)(2) of Regulation

AB, if Lender expects that the principal amount of the Loan (or portion of the Loan included in such Securitization) together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan (or apportion of the Loan included in such Securitization) and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than seventy-five (75) days after the end of each fiscal year of Borrower; provided, however, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which an Exchange Act Filing is not required. If requested by Lender, and to the extent not prohibited by any applicable lease, other agreement or order, Borrower shall furnish to Lender financial data and/or financial statements for any tenant of any of the Properties if, in connection with a Securitization, Lender expects there to be, with respect to such tenant or group of affiliated tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in the Securitization such that such tenant or group of affiliated tenants would constitute a Significant Obligor.

(d) All financial data and financial statements provided by Borrower hereunder pursuant to Section 11.1(c) and (d) hereof shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation AB and other applicable legal requirements. All financial statements referred to in Section 11.1(c) above shall be audited by independent accountants of Borrower (which accountants shall be acceptable to Lender) in accordance with Regulation AB and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation AB and all applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All financial data and financial statements (audited or unaudited) provided by Borrower under Section 11.1(c) shall be accompanied by an Officer’s Certificate stating that such financial statements meet the requirements set forth in the first sentence of this Section 11.1(d).

(e) If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall determine to be required pursuant to Regulation AB or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by Lender.

(f) In the event Lender determines, in connection with a Securitization, that the financial data and financial statements and (if applicable) related accountants' reports and consents required in order to comply with Regulation AB or any amendment, modification or replacement of Regulation AB or with other legal requirements are other than as provided herein, then notwithstanding the provisions of Section 11.1(c) and (d) hereof, Lender may request, and Borrower shall promptly provide, such other financial statements and (if applicable) related accountants' reports and consents as Lender determines to be necessary or appropriate for such compliance.

Section 11.2 Securitization Indemnification.

(a) Borrower understands that information provided to Lender by Borrower and its agents, counsel and representatives may be included in disclosure documents in connection with the Securitization, including, without limitation, an offering circular, a prospectus, prospectus supplement, private placement memorandum or other offering document (each, a **"Disclosure Document"**) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the **"Securities Act"**), or the Securities and Exchange Act of 1934, as amended (the **"Exchange Act"**), and may be made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization.

(b) Borrower shall provide in connection with each of (i) a preliminary and a final private placement memorandum or (ii) a preliminary and final prospectus or prospectus supplement, as applicable, an agreement (A) certifying that Borrower has examined such Disclosure Documents specified by Lender and that each such Disclosure Document, as it relates to Owner, Borrower, Borrower Affiliates, the Property, the Collateral, Manager, Sponsor, Guarantor and all other aspects of the Loan and the Senior Loan, does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) indemnifying Lender (and for purposes of this Section 11.2, Lender hereunder shall include its officers and directors), the Affiliate of Lender that has filed the registration statement relating to the Securitization (the **"Registration Statement"**), each of its directors, each of its officers who have signed the Registration Statement and each Person that controls the Affiliate within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the **"Lender Group"**), and Lender, and any other placement agent or underwriter with respect to the Securitization, each of their respective directors and each Person who controls Lender or any other placement agent or underwriter within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the **"Underwriter Group"**) for any losses, claims, damages or liabilities (collectively, the **"Liabilities"**) to which Lender, the Lender Group or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such sections or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such sections or necessary in order to make the statements in such sections, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse Lender, the Lender Group and/or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Lender Group and the Underwriter Group in connection with investigating or defending the Liabilities; provided, however, that Borrower will

be liable in any such case under clauses (B) or (C) above only to the extent that any such loss claim, damage or liability arises out of or is based upon any such untrue statement or omission made therein in reliance upon and in conformity with information furnished to Lender by or on behalf of Borrower in connection with the preparation of the Disclosure Document or in connection with the underwriting or closing of the Loan, including, without limitation, financial statements of Borrower, operating statements and rent rolls with respect to the Property (collectively, the “**Provided Information**”). The indemnification provided for in clauses (B) and (C) above shall be effective whether or not the indemnification agreement described above is provided; provided, however, such indemnity shall be limited to the Provided Information and shall only be effective to the extent that Lender accurately states the Provided Information in the applicable Disclosure Document. The aforesaid indemnity will be in addition to any liability which Borrower may otherwise have.

(c) In connection with Exchange Act Filings, Borrower shall (i) indemnify Lender, the Lender Group and the Underwriter Group for Liabilities to which Lender, the Lender Group or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Disclosure Document or the omission or alleged omission to state in the Disclosure Document a material fact required to be stated in the Disclosure Document in order to make the statements in the Disclosure Document, in light of the circumstances under which they were made, not misleading and (ii) reimburse Lender, the Lender Group or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Lender Group or the Underwriter Group in connection with defending or investigating the Liabilities; provided, however, such indemnity shall be limited to the Provided Information and shall only be effective to the extent that Lender accurately states the Provided Information in the applicable Disclosure Document.

(d) Promptly after receipt by an indemnified party under this Section 11.2 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 11.2, notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Section 11.2, such indemnified party shall pay for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party at the cost of the indemnifying party. The indemnifying party shall not be

liable for the expenses of more than one separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 11.2(b) or (c) hereof is for any reason held to be unenforceable as to an indemnified party in respect of any losses, claims, damages or liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 11.2(b) or (c) hereof, the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages or liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) Lender's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. Lender and Borrower hereby agree that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

(f) Borrower shall jointly and severally indemnify Lender and its officers, directors, partners, employees, representatives, agents and Affiliates against any Losses to which Lender or its officers, directors, partners, employees, representatives, agents and Affiliates, may become subject in connection with any indemnification to the Rating Agencies in connection with issuing, monitoring or maintaining the Securities insofar as the Losses arise out of or are based upon any untrue statement of any material fact in any information provided by or on behalf of Borrower to the Rating Agencies (the "**Covered Rating Agency Information**") or arise out of or are based upon the omission to state a material fact in the Covered Rating Agency Information required to be stated therein or necessary in order to make the statements in Covered Rating Agency Information, in light of the circumstances under which they were made, not misleading.

(g) The liabilities and obligations of both Borrower and Lender under this Section 11.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(h) Notwithstanding anything to the contrary contained in this Article 11, Borrower shall not be required to incur any material costs or expenses in the performance of its obligations under Section 11.1, Section 11.2 (excluding the indemnity obligations set forth therein), Section 11.6 and Section 11.7, other than expenses of Borrower's legal counsel, accountants and consultants.

Section 11.3 Intentionally Omitted.**Section 11.4 Servicer.**

(a) At the option of Lender, the Loan may be serviced by a servicer/trustee selected by Lender (the “**Servicer**”) and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to such servicer/trustee pursuant to a servicing agreement between Lender and such Servicer; provided, however, Borrower shall not be obligated to pay any monthly master servicing fees to such Servicer.

(b) Other than as set forth in Section 11.4 (a) above, Borrower shall pay all of the customary fees and expenses of the Servicer and any reasonable third-party fees and expenses in connection with the Loan, including any prepayments, releases of the Collateral, approvals under the Loan Documents requested by Borrower, other requests under the Loan, defeasance, assumption of Borrower’s obligations or modification of the Loan, as well as any fees and expenses in connection with the special servicing or work-out of the Loan or enforcement of the Loan Documents, including, special servicing fees, operating or trust advisor fees (if the Loan is a specially serviced loan or in connection with a workout), work-out fees, liquidation fees, attorneys’ fees and expenses and other fees and expenses in connection with the modification or restructuring of the Loan.

Section 11.5 Rating Agency Costs.

In connection with any Rating Agency consent, approval or review required hereunder or under the Senior Loan Documents (other than the initial review of the Loan by the Rating Agencies in connection with a Securitization), Borrower shall pay all of the costs and expenses of Lender, Servicer and each Rating Agency in connection therewith, and, if applicable, shall pay any fees imposed by any Rating Agency in connection therewith.

Section 11.6 Intentionally Omitted.**Section 11.7 Severance Option.**

Lender shall have the option (the “**Severance Option**”) at any time to require Borrower to execute and deliver “component” notes and/or modify the Loan in order to create one or more senior and subordinate notes (i.e., an A/B or A/B/C structure) and/or one or more additional components of the Note or notes, reduce the number of components of the Note or the notes, revise the interest rate for each component, increase or decrease the monthly debt service payments for each component or eliminate the component structure and/or the multiple note structure of the Loan (including the elimination of the related allocation of principal and interest payments); provided, that (i) the total loan amounts for all components shall equal the then outstanding amount of the Loan immediately prior to Lender’s exercise of the Severance Option and (ii) the weighted average interest rate of all components shall initially equal the Interest Rate. At Lender’s election, each note comprising the Loan may be subject to one or more Securitizations. Lender shall have the right to modify the Note and/or the notes and any components in accordance with this Section 11.7 and, provided that such modification shall comply with the terms of this Section 11.7, it shall become immediately effective. Borrower shall, at Borrower’s sole cost and expense, cooperate with Lender in Lender’s exercise of the

Severance Option in good faith and in a timely manner, which such cooperation shall include, but not be limited to, executing such amendments to the Loan Documents as may be reasonably requested by Lender or requested by the Rating Agencies. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect such transactions, Borrower hereby ratifying all that such attorney shall do by virtue thereof; provided, however, that Lender agrees not to exercise such power of attorney unless Borrower fails to execute and deliver such documents to Lender within five (5) Business Days following Lender's written request. It shall be an Event of Default under this Agreement, the Note, the Mortgage and the other Loan Documents if Borrower fails to comply with any of the terms, covenants or conditions of this Section 11.7 after expiration of five (5) Business Days after notice thereof.

Section 11.8 Conversion to Registered Form.

At the request of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "**Registrar**") reasonably acceptable to Lender which shall maintain, subject to such reasonable regulations as it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the IRS Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Borrower or Lender or any other lender in respect of transfers of the Note and other Loan Documents.

ARTICLE XII

INDEMNIFICATIONS

Section 12.1 General Indemnification.

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all actual Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property or the Collateral to be in compliance with any Applicable Law; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease or with respect to any Property or Collateral; (f) the payment of any commission, charge or brokerage fee to anyone (other than a broker or other agent retained by Lender) which may be

payable in connection with the funding of the Loan evidenced by the Note and secured by the Security Instrument; and/or (g) the holding or investing of the funds on deposit in the Mezzanine Loan Reserve Accounts or the performance of any work or the disbursement of funds in each case in connection with the Mezzanine Loan Reserve Funds. Any amounts payable to Indemnified Parties by reason of the application of this Section 12.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Indemnified Parties until paid.

Section 12.2 Tax and Transfer Tax Indemnification.

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to (a) any tax on the making of the Security Instrument, the Note or any of the other Loan Documents (whether due upon the making of same or upon the exercise of its remedies under the Loan Documents), and (b) any transfer tax incurred by Indemnified Parties in connection with the exercise of remedies hereunder or under any other Loan Documents.

Section 12.3 ERISA Indemnification.

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Indemnified Parties may incur, directly or indirectly, as a result of a default under Sections 3.7 or 4.19 of this Agreement.

Section 12.4 Duty to Defend, Legal Fees and Other Fees and Expenses.

Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 12.5 Survival.

The obligations and liabilities of Borrower under this Article XII shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of an assignment in lieu of foreclosure of the Security Instrument.

Section 12.6 Environmental Indemnity.

Simultaneously herewith, Borrower and Guarantor have executed and delivered the Environmental Indemnity to Lender, which Environmental Indemnity is not secured by the Security Instrument.

ARTICLE XIII**EXCULPATION****Section 13.1 Exculpation.**

(a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Loan Documents by any action or proceeding wherein a money judgment or any deficiency judgment or other judgment establishing personal liability shall be sought against Borrower or any principal, director, officer, employee, beneficiary, shareholder, partner, member, trustee, agent, or Affiliate of Borrower (but specifically excluding Guarantor) or any legal representatives, successors or assigns of any of the foregoing (collectively, the “**Exculpated Parties**”), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Loan Documents, or in the Collateral or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower’s interest in the Collateral and in any other collateral given to Lender, and Lender, by accepting the Loan Documents, shall not sue for, seek or demand any deficiency judgment against Borrower or any of the Exculpated Parties in any such action or proceeding under or by reason of or under or in connection with the Loan Documents. The provisions of this Section shall not, however, (1) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (2) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (3) affect the validity or enforceability of any indemnity, guaranty or similar instrument (including, without limitation, the indemnities set forth in Article XII hereof, Section 11.2 hereof, in the Guaranty and in the Environmental Indemnity) made in connection with the Loan or any of the rights and remedies of Lender thereunder (including, without limitation, Lender’s right to enforce said rights and remedies against Borrower and/or Guarantor (as applicable) personally and without the effect of the exculpatory provisions of this Article XIII); (4) impair the right of Lender to obtain the appointment of a receiver; (5) intentionally omitted; (6) impair the right of Lender to enforce Section 4.12(e) of this Agreement; (7) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Collateral; or (8) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any Losses incurred by Lender (including attorneys’ fees and costs reasonably incurred) arising out of or in connection with any of the following:

(i) fraud or intentional misrepresentation or any intentional failure to disclose a material fact by Borrower, Owner, Guarantor, Sponsor, or any Borrower Party in connection with the Loan or an intentional breach of any representation, warranty or certification contained in this Agreement or any other Loan Document or in any document executed and delivered to Lender in connection with the making of the Loan;

(ii) the gross negligence or willful misconduct of Borrower, Owner, Guarantor, Sponsor, or any Borrower Party or the commission of a criminal act or a breach of any Applicable Law (including RICO) by Borrower, Owner, Guarantor, Sponsor or any Borrower Party which results in any seizure or forfeiture of the Collateral or the Property, or any portion thereof, or Borrower's or Owner's interest therein;

(iii) material physical waste to the Property (including, without limitation, any arson or abandonment of the Property) (provided Borrower shall not be liable to the extent that the revenue generated by the Property is insufficient to yield sufficient funds to prevent such material physical waste) and/or the removal or disposal of any portion of the Property after an Event of Default by Borrower, Owner, Guarantor, Sponsor or any Borrower Party;

(iv) the misapplication, misappropriation or conversion by Borrower or Owner of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards or other amounts received in connection with the Condemnation of all or a portion of the Property, (C) any Rents, (D) any Tenant security deposits or Rents collected in advance, (E) any Lease Termination Payments or (F) any Net Liquidation Proceeds After Debt Service;

(v) failure to pay any Taxes or Other Charges, charges for labor or materials or any other charges that can create liens on any portion of the Property or the Collateral to the extent that the gross revenue from the Property is sufficient to pay such amounts (other than (x) amounts deposited with Senior Lender as Tax Reserve Funds (as defined in the Senior Loan Agreement) for Taxes or Other Charges where Lender elects not to apply such funds toward payment of such Taxes or Other Charges owed or (y) Taxes or Other Charges owed that are contested strictly in accordance with the terms of the Loan Documents);

(vi) failure to maintain insurance or cause to be maintained as required by this Agreement to the extent that the gross revenue from the Property is sufficient to pay the Insurance Premiums relating thereto (other than the failure to pay amounts deposited with Senior Lender as Insurance Reserve Funds (as defined in the Senior Loan Agreement) for Insurance Premiums to be paid to maintain such insurance where Lender elects not to apply such funds toward payment of such Insurance Premiums);

(vii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or this Agreement concerning Environmental Laws and Hazardous Substances;

(viii) any fees or commissions paid by Borrower after the occurrence of any Event of Default to Guarantor, Owner, Sponsor and/or any Affiliate of Borrower, Owner, Guarantor and/or Sponsor in violation of the terms of the Loan Documents;

(ix) Borrower's breach of, or failure to comply with, the representations, warranties and covenants contained in Article XV of this Agreement and/or the provisions of Sections 11.2, 12.2 and 12.3 hereof;

(x) Borrower fails to cause Owner to appoint a new property manager upon the request of Lender, as required by, and in accordance with the terms and provisions of, this Agreement, the Consent of Manager and the other Loan Documents or Borrower causes Owner to appoint a new property manager or replaces the property manager other than in accordance with the terms of this Agreement, the Consent of Manager and the other Loan Documents;

(xi) any litigation or other legal proceeding related to the Debt filed by Borrower, Owner, Guarantor, Sponsor or any Borrower Party that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates the efforts of Lender to exercise any rights and remedies available to Lender as provided herein and in the other Loan Documents, unless a court of competent jurisdiction finds that such actions by any such Borrower Party were undertaken in good faith and were not based on a frivolous or meritless position;

(xii) any Borrower's failure to deposit any springing Reserve Funds deposits pursuant to the terms of this Agreement;

(xiii) any breach by Borrower of any representation, warranty or covenant contained in Sections 3.32 or 4.22, provided that Borrower shall not be liable for a breach of Section 4.22 to the extent that such breach is a result of insufficient cash flow being generated by the operation of the Property to pay amounts due under any REA when due and such insufficiency is not the result of the misappropriation or conversion of any revenues of the Property by or on behalf of Borrower, Owner, Guarantor, or any Affiliate of Borrower, Owner, or Guarantor;

(xiv) upon a Casualty or Condemnation, (A) the inability of the Property to be restored to (i) the same use and operation as conducted immediately prior to such Casualty or Condemnation, and/or (ii) substantially the same area, footprint, occupancy capacity, size, density and dimensions as existed immediately prior such Casualty or Condemnation (i.e., the same number of buildings with substantially the same rentable square footage, and substantially the same number of parking spaces), in each case, in compliance with all applicable Legal Requirements (including, without limitation, all zoning, building, land use and similar codes, ordinances and laws); and/or (B) increased costs of any Restoration to comply with then-current zoning, building, land use and similar codes, ordinances and laws;

(xv) any representation, warranty or covenant contained in Article 5 hereof is violated or breached and none of the assets and/or liabilities of any Borrower have been substantively consolidated with the assets and/or liabilities of any other Person;

(xvi) the creation of any security interest or any lien intended to be created pursuant to this Agreement or any of the other Loan Documents, or any other transfer of property described in the Loan Document, is deemed to be a fraudulent conveyance or a preference or otherwise is deemed void pursuant to any principles limiting the rights of creditors, whether such claims, demands or assertions are made under the Bankruptcy Code, under other Creditors' Rights Laws or under any applicable state fraudulent conveyance statutes or similar laws;

(xvii) the existence of any Violations (as defined in the Senior Loan Agreement);

(xviii) any breach by Borrower or Senior Borrower of any covenant contained in Section 4.26 of this Agreement or Section 4.26 of the Senior Loan Agreement; and/or

(xix) any liabilities and obligations of Borrower or any subsidiary of Borrower:

(1) accrued or accruing on or prior to any acquisition of title to the Collateral pursuant to a UCC foreclosure sale, a UCC strict foreclosure, an assignment in lieu of foreclosure or other enforcement action under the Loan Documents (collectively, an **"Equity Collateral Enforcement Action"**; and the date on which an Equity Collateral Enforcement Action is consummated, an **"Equity Collateral Transfer Date"**) with respect to indemnification obligations of Borrower accrued or accruing in favor of any subsidiary of Borrower or any Affiliate of Borrower (individually and collectively, together with Borrower, a **"Borrower Control Party"**) under any organizational documents of any Borrower Control Party;

(2) accrued or accruing prior to, on, or after the Equity Collateral Transfer Date to pay actual, out of pocket legal fees to legal counsel engaged by any Borrower Control Party prior to the Equity Collateral Transfer Date; or

(3) accrued or accruing prior to, on, or after the Equity Collateral Transfer Date (A) under any agreement with an Affiliate of Borrower (unless such agreement has been assumed in writing by the Person acquiring the Collateral on or after the Equity Collateral Transfer Date) or (B) under any agreement between any Borrower Control Party, on the one hand, and any Person not Affiliated with any Borrower Control Party, on the other hand (a **"Third Party Agreement"**), that has been entered into by Borrower or Owner without the prior written approval (or deemed approval) of Lender (to the extent such prior written approval was required under the Loan Documents), except to the extent that such Third Party Agreement (x) has been assumed in writing by the Person acquiring

the Collateral on or after the Equity Collateral Transfer Date or (y) was on reasonable or customary market terms.

(b) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower in the event that: (i) (A) any representation, warranty or covenant contained in Article V hereof is violated or breached and the assets and/or liabilities of any Borrower have been consolidated with the assets and/or liabilities of any other Person in a bankruptcy or other similar proceeding and/or (B) any representation, warranty or covenant contained in Sections 5.1(a)(i),(ii), (vii) or (xi) hereof is violated or breached; (ii) if any Sale or Pledge occurs that is not a Permitted Transfer; (iii) any Borrower or Owner files a voluntary petition under the Bankruptcy Code or any other Creditors' Rights Laws; (iv) an Affiliate, officer, director, or representative which Controls, directly or indirectly, any Borrower or Owner files, or joins in the filing of, an involuntary petition against any Borrower or Owner under the Bankruptcy Code or any other Creditors' Rights Laws, solicits or causes to be solicited petitioning creditors for any involuntary petition against any Borrower or Owner from any Person or aids, cooperates, colludes with or otherwise assists such Person; (v) any Borrower or Owner files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Creditors' Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; (vi) Borrower, Guarantor, Owner, or any Affiliate, officer, director, or representative which Controls any Borrower, Guarantor, or Owner consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for any Borrower, Guarantor, Owner, or any portion of the Collateral; (vii) any Borrower or Owner makes an assignment for the benefit of creditors or admits in any legal proceeding its insolvency or inability to pay its debts as they become due; (viii) there is substantive consolidation of any Borrower or Owner (or any Restricted Party) with any other Person in connection with any federal or state bankruptcy proceeding involving the Guarantor or any of its Affiliates; (ix) any Borrower or Owner (or any Restricted Party) contests or opposes any motion made by Lender to obtain relief from the automatic stay or seeks to reinstate the automatic stay in the event of any federal or state bankruptcy or insolvency proceeding involving the Guarantor or its Affiliates; or (x) Borrower breaches or fails to comply with the covenants contained in and/or the provisions of Section 11.6 or Section 11.7 hereof; provided, however, that Borrower's liability under this Section 13.1(b)(x) shall cease upon the date on which Borrower complies with the covenants contained in and/or the provisions of Section 11.6 and Section 11.7 hereof, as applicable.

Section 13.2 Survival.

The obligations and liabilities of Borrower under this Article XIII shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of an assignment in lieu of foreclosure of the Security Instrument.

ARTICLE XIV

NOTICES

Section 14.1 Notices.

All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (b) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:	c/o ArciTerra Companies 2701 E. Camelback Rd., Suite 150 Phoenix, Arizona 85016 Attention: Blaine D. Rice Facsimile No. (602) 956-4494
With a copy to:	Greenberg Traurig, LLP 2375 E. Camelback Rd., Suite 700 Phoenix, Arizona 85016 Attention: Jake B. Smith, Esq. Email: smithjake@gtlaw.com
If to Lender:	Quadrant Mezz Fund, LP 8333 Douglas Avenue, Suite 1350 Dallas, Texas 75225 Attention: Matt Welsh Email: mwelsh@quadrantcapital.com
With a copy to:	Thompson & Knight LLP 1722 Routh Street, Suite 1500 Dallas, Texas 75201 Attention: Dan Hopper, Esq. Email: dan.hopper@tklaw.com

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE XV

FURTHER ASSURANCES

Section 15.1 Replacement Documents.

Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note, this Agreement or any of the other Loan Documents which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of the Note, this Agreement or such other Loan Document, Borrower will issue, in lieu thereof, a replacement thereof, dated the date of the Note, this Agreement or such other Loan Document, as applicable, in the same principal amount thereof and otherwise of like tenor.

Section 15.2 Recording of Security Instrument, etc.

(a) Borrower forthwith upon the execution and delivery of the Security Instrument and thereafter, from time to time, will cause the Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Collateral and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Collateral. Without limitation of the generality of the foregoing, at the request of Lender, Borrower shall execute and deliver separate security instruments with respect to each Individual Collateral as replacements of the Security Instrument executed and delivered on the date hereof, it being acknowledged that Lender shall have no obligation to release any Individual Collateral from the lien of the Security Instrument unless and until Borrower shall have delivered the same.

(b) Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Security Instrument, this Agreement, the other Loan Documents, any note, any security instrument with respect to the Collateral and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Security Instrument, any security instrument with respect to the Collateral or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by Applicable Law so to do.

Section 15.3 Further Acts, etc.

Borrower will, at Borrower's cost, and without expense to Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, pledge agreements, security instruments, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Collateral and rights hereby granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of

this Agreement or for filing, registering or recording the Security Instrument, or for complying with all Applicable Law. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Collateral. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 15.3.

Section 15.4 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the Closing Date which deducts the Debt from the value of the Collateral for the purpose of taxation and which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Collateral, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 15.4(a).

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property or the Collateral, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property or the Collateral, or any part thereof, for real estate tax purposes by reason of the Mortgage, the Security Instrument or the Debt. If such claim, credit or deduction shall be required by Applicable Law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 15.4(b).

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to any of the Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

ARTICLE XVI

WAIVERS

Section 16.1 Remedies Cumulative; Waivers.

The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to the Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in

such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

Section 16.2 Modification, Waiver in Writing.

No modification, amendment, extension, discharge, termination or waiver of any provision of the Loan Documents, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 16.3 Delay Not a Waiver.

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege under any of the Loan Documents, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under the Loan Documents, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 16.4 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER, BY ACCEPTANCE OF THIS AGREEMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

Section 16.5 Waiver of Notice.

Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Agreement specifically and expressly provides for the giving of notice by Lender to Borrower and (b) with respect to matters for which Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to

receive any notice from Lender with respect to any matter for which this Agreement does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 16.6 Remedies of Borrower.

In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by Applicable Law or under the Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Lender agrees that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

Section 16.7 Marshalling and Other Matters.

Borrower hereby waives, to the extent permitted by Applicable Law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale under the Security Instrument of the Collateral or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of the Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Collateral subsequent to the date of the Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 16.8 Waiver of Statute of Limitations.

To the extent permitted by Applicable Law, Borrower hereby expressly waives and releases to the fullest extent permitted by Applicable Law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its obligations hereunder, under the Note, Security Instrument or other Loan Documents.

Section 16.9 Waiver of Counterclaim.

Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 16.10 Sole Discretion of Lender.

(a) Wherever pursuant to this Agreement (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in Lender's sole discretion, except as may be otherwise expressly and specifically provided herein. Prior to a Securitization, whenever pursuant to this Agreement or any other Loan Document the Rating Agencies are given any right to approve or disapprove any matter, or any arrangement or term is to be satisfactory to the

Rating Agencies, to the extent not already required, the decision of Lender to approve or disapprove such matter or to decide whether arrangements or terms are satisfactory or not satisfactory, shall be substituted therefor.

ARTICLE XVII

MISCELLANEOUS

Section 17.1 Survival.

This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth in the Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 17.2 Governing Law.

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK AND THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE

CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 14.1, AND AGREES THAT SUCH SERVICE AT SUCH ADDRESS IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

Section 17.3 Headings.

The Article and/or Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 17.4 Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 17.5 Preferences.

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Creditors' Rights Laws, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 17.6 Expenses.

Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender within ten (10) Business Days of receipt of written notice from Lender for all reasonable, out-of-pocket costs and expenses (including reasonable, actual attorneys' fees and disbursements) reasonably incurred by Lender in accordance with this Agreement in connection with (i) the preparation, negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated hereby; (ii) the administration of the Loan Documents for the

term of the Loan and any modifications and amendments, if any, of any of the other Loan Documents; (iii) the processing of any Borrower requests made under any of the Loan Documents; (iv) the enforcement of any remedies under the Loan Documents or Lender's satisfaction of any of Borrower's, Owner's or Guarantor's obligations under the Loan Documents (v) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, the Loan Documents, the Property, the Collateral or any other security given for the Loan; (vi) title insurance, surveys, and inspections, and (vii) otherwise protecting Lender's interests under any Loan Document, including, without limitation, in connection with any "work-out" of the Loan or any bankruptcy, insolvency, receivership, reorganization, rehabilitation, liquidation or other similar proceeding in respect of Borrower, Owner or Guarantor or an assignment by Borrower, Owner or Guarantor for the benefit of its creditors; provided, however, Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of gross negligence, illegal acts, fraud or willful misconduct of Lender. Borrower also acknowledges and agrees that formal written appraisals of the Property or the Collateral by a licensed independent appraiser may be required by Lender's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that Lender may, at its option, require inspection of the Property by an independent supervising architect and/or cost engineering specialist at least semiannually. Notwithstanding the foregoing, Borrower shall not be required to pay for more than one appraisal in any twelve (12) month period unless an Event of Default has occurred and is continuing, such appraisal is obtained in connection with a casualty or condemnation or as otherwise required by law. In addition, if Borrower is undertaking a Restoration or is performing any work at the Property that requires the obtaining of a building permit, then Borrower shall pay or cause Owner to pay the reasonable out-of-pocket costs of architects, engineers and other consultants retained by Lender to review the performance of such Restoration or work. Any amounts payable to Lender pursuant to this Section shall become immediately due and payable upon written demand and, if the same is not paid within ten (10) Business Days from such written demand, shall bear interest at the Default Rate from the date which is ten (10) Business Days from such written demand until the date such amounts have been paid.

Section 17.7 Cost of Enforcement.

In the event (a) that the Security Instrument is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, or (c) Lender exercises any of its other remedies under the Loan Documents, Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes. Any amounts payable to Lender pursuant to this Section 17.7 shall become immediately due and payable upon written demand and, if the same is not paid within ten (10) Business Days from such written demand, shall bear interest at the Default Rate from the date which is ten (10) Business Days from such written demand until the date such amounts have been paid.

Section 17.8 Exhibits and Schedules Incorporated.

The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 17.9 Offsets, Counterclaims and Defenses.

Any assignee of Lender's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 17.10 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created under the Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender or to grant Lender any interest in the Collateral other than that of secured party, creditor, beneficiary or lender.

(b) The Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in the Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

(c) The general partners, members, principals and (if Borrower is a trust) beneficial owners of Owner and Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

(d) Notwithstanding anything to the contrary contained herein, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(e) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including, without limitation,

any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

(f) Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations and warranties set forth in Article III of this Agreement without any obligation to investigate the Property or Collateral and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept the Loan Documents in the absence of the warranties and representations as set forth in Article III of this Agreement.

Section 17.11 Publicity; Advertising.

All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior written approval of Lender, not to be unreasonably withheld. Borrower hereby agrees that Lender and its affiliated entities, and its subsidiaries, may publicly identify details of the Loan in their respective advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the Closing Date, and a description of the size and location of the Property.

Section 17.12 Conflict; Construction of Documents; Reliance.

In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. Wherever the phrase "during the continuance of an Event of Default" or the like appears herein or in any other Loan Document, such phrase shall not mean or imply that Lender has any obligation to accept a cure of such Event of Default. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and the Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings

and other real estate transactions and investments which may be viewed as adverse-to or competitive with the business of Borrower or its Affiliates.

Section 17.13 Entire Agreement.

The Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Lender are superseded by the terms of the Loan Documents.

Section 17.14 Liability.

If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 17.15 Duplicate Originals; Counterparts.

This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 17.16 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

(a) Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the respective parties thereto, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(i) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(ii) the effects of any Bail-In Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it

in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(C) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

As used in this Section 17.16 the following terms have the following meanings ascribed thereto:

(i) “**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution; (ii) “**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule; (iii) “**EEA Financial Institution**” means (x) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority; (y) any entity established in an EEA Member Country which is a parent of an institution described in clause (x) of this definition, or (x) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (x) or (y) of this definition and is subject to consolidated supervision with its parent; (iv) “**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway or any other member state of the European Economic Area; (v) “**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution; (vi) “**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time; and (vii) “**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 17.17 Brokers and Financial Advisors.

(a) Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Loan other than Tower Capital LLC (“**Broker**”) whose fees shall be paid by Borrower pursuant to a separate agreement. Borrower shall indemnify and hold Lender harmless from and against any and all claims, liabilities, costs and expenses (including attorneys’ fees, whether incurred in connection with enforcing this indemnity or defending claims of third parties) of any kind in any way relating to or arising from a claim by any Person (including Broker) that such Person acted on behalf of Borrower in connection with the transactions contemplated herein. The provisions of this Section 17.17 shall survive the expiration and termination of this Agreement and the repayment of the Debt.

(b) Notwithstanding anything in Section 17.17(a) above to the contrary, Borrower hereby acknowledges that (i) at Lender’s sole discretion, Broker may receive further consideration from Lender relating to the Loan or any other matter for which Lender may elect to

compensate Broker pursuant to a separate agreement between Lender and Broker (which compensation may include a one-time payment on the date hereof and/or ongoing payments from Lender to Broker), (ii) Lender shall have no obligation to disclose to Borrower the existence of any such agreement or the amount of any such additional consideration paid or to be paid to Broker whether in connection with the Loan or otherwise and (iii) Borrower has had the opportunity to speak with Broker regarding such additional consideration. Borrower hereby acknowledges that such additional consideration may create a potential conflict of interest for Broker in its relationship with Borrower and/or Guarantor and agrees that (x) Lender is not responsible for any recommendations or advice that Broker has given to Borrower or Guarantor, (y) Lender and Borrower (and Guarantor) are dealing at arms'-length with each other in a commercial lending transaction and (z) no fiduciary or other special relationship exists or shall exist between them. Borrower hereby further agrees and acknowledges that Lender has not interfered with Broker's relationship with Borrower or Guarantor in connection with the transaction contemplated herein and has not caused Broker to breach any duty that it may owe Borrower or Guarantor.

Section 17.18 Cross Default; Cross Collateralization.

Each Borrower acknowledges that Lender has made the Loan to Borrowers upon the security of its collective interest in the Collateral and in reliance upon the aggregate of all Collateral taken together being of greater value as collateral security than the sum of each Individual Collateral taken separately. Each Borrower agrees that the Security Instruments are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any of the Security Instruments shall constitute an Event of Default under each of the other Security Instruments which secure the Note; (ii) an Event of Default under the Note or this Agreement shall constitute an Event of Default under each Security Instrument; and (iii) each Security Instrument shall constitute security for the Note as if a single blanket lien were placed on all of the Collateral as security for the Note.

Section 17.19 Contribution Among Borrowers.

Notwithstanding that Borrowers are jointly and severally liable to Lender for payment of the Loan, as among Borrowers, each shall be liable only for such Borrower's Allocated Loan Amount and, accordingly, each Borrower whose Collateral or other assets are, from time to time, utilized to satisfy a portion of the Debt in excess of such Borrower's Allocated Loan Amount, shall be entitled, commencing ninety-five (95) days after payment in full of the Debt, to contribution from each of the other Borrowers pro-rata in accordance with their respective liabilities in accordance with this Agreement. This Allocated Loan Amount for each Borrower shall equal the Allocated Loan Amount for the Collateral owned by such Borrower.


(NO FURTHER TEXT ON THIS PAGE)

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

AT SEVEN HILLS AURORA MEMBER, LLC,
AT ALTUS CUMBERLAND MEMBER, LLC,
AT EASTMAN MEMBER, LLC,
ATA LANIER FAYETTEVILLE MEMBER, LLC,
AT PT DENVILLE MEMBER, LLC,
AT NEW LENOX-IL MEMBER, LLC,
AT AUBURN PLAZA MEMBER, LLC,
AT PLAINFIELD VILLAGE MEMBER, LLC,
ARCITERRA WESTGATE INDIANAPOLIS
MEMBER, LLC,
AT HL BURLINGTON MEMBER, LLC,
AT VILLE PLATTE MEMBER, LLC,
AT SWEDEN MEMBER, LLC,
AT MAYODAN MEMBER, LLC,
AT LONGVIEW MEMBER, LLC,
each a Delaware limited liability company

By: Arciterra Companies, LLC,
an Arizona limited liability company,
their manager

By: 
Name: Blaine G. Rice
Title: Vice President

LENDER:

QUADRANT MEZZ FUND, LP,
a Delaware limited partnership

By: Quadrant Finance Partners GP, LLC,
a Delaware limited liability company,
its general partner


By: 
Name: Andrew Zeitman
Title: Manager

EXHIBIT A

DEFINITIONS

“Acceptable Replacement Guarantor” shall mean one or more Persons that satisfy the criteria set forth in clauses (1) through (4) of the defined term “Qualified Transferees” for whom Lender shall have received a credit check reasonably acceptable to Lender and whose identity, experience, financial condition and creditworthiness, including net worth and liquidity, is acceptable to Lender in Lender’s sole discretion, and, in each case, (i) either Controls Borrower or owns a direct or indirect interest in Borrower, (ii) is formed in, maintains its principal place of business in (or if such Person is an individual is a citizen of and maintains its primary residence in) and is subject to the laws of the United States or Canada, (iii) has all or substantially all of its assets in the United States or Canada, and (iv) is otherwise reasonably acceptable to Lender in all respects.

“Accounts” shall have the meaning set forth in the Senior Loan Agreement, and any deposit, reserve and similar accounts, if any, now or hereafter established under this Agreement or any of the other Loan Documents.

“Act” shall mean the Delaware Limited Liability Company Act, 6 Del. C. §18-101, et seq.

“Actual/360 Basis” shall mean on the basis of a 360-day year and charged on the basis of actual days elapsed for any whole or partial month in which interest is being calculated.

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, owns more than ten percent (10%) of legal, beneficial or economic interest in such Person, is in Control of, is Controlled by or is under common ownership or Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“Affiliated Manager” shall mean any Manager that is an Affiliate of any Borrower, Owner, Guarantor or Sponsor.

“Aggregate Outstanding Principal Balance” shall mean, as of any date, sum of (x) the outstanding principal balance of the Loan and (y) the Senior Loan Outstanding Principal Balance.

“Allocated Loan Amount” shall mean, with respect to each Individual Collateral, the amount set forth on Schedule IV to this Agreement.

“ALTA” shall mean American Land Title Association, or any successor thereto.

“Alteration Threshold” shall mean, with respect to each Individual Property, an amount equal to two percent (2%) of the Proportionate Loan Amount for such Individual Property.

“Annual Budget” shall have the meaning set forth in Section 4.12(a)(v).

“Applicable Law” shall mean all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower, Owner, the Collateral or the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, without limitation, the Americans with Disabilities Act of 1990, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower or the Property or any part thereof, including, without limitation, any which may (i) require repairs, modifications or alterations in or to the Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

“Appraised Value” shall mean, the fair market value of each Property that will remain subject to the Liens of the Loan Documents after giving effect to the release of an Individual Property pursuant to Section 2.9 hereof reflected in an appraisal paid for by Borrower that is (i) dated not more than sixty (60) days prior to the date of anticipated the sale of any Individual Property pursuant to Section 2.9 hereof (ii) signed by a qualified, independent MAI appraiser selected or approved by Lender, (iii) addressed to Lender and its successors and assigns, (iv) made in compliance with the requirements of the Uniform Standard of Professional Appraisal Practice, or any successor thereto, and Title XI of the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 and the regulations promulgated thereunder, and (v) otherwise reasonably satisfactory to Lender in all material respects.

“Approved Accounting Method” shall mean the GAAP method of accounting, the cash basis method of accounting or such other method of accounting reasonably acceptable to Lender, in each case, consistently applied throughout the term of the Loan (both as to the application of the rules governing such accounting method and the choice of which accounting method to apply). The foregoing shall in no way contravene Borrowers’ obligation, to the extent required pursuant to any provision of Article XI hereof, to prepare financial statements pursuant to a different accounting method in order to comply with the requirements of Regulation S-K, Regulation S-X, Regulation AB, and other applicable Legal Requirements. As of the date hereof, Borrower and Guarantor are employing the cash basis method of accounting.

“Approved LLC” shall mean a limited liability company formed under Delaware or Maryland law which (i) has at least one springing member, which, upon the dissolution of all of the members or the withdrawal or the disassociation of all of the members from such limited liability company, shall immediately become the sole member of such limited liability company, and (ii) otherwise meets the Rating Agency criteria then applicable to such entities.

“Auburn Cord Borrower” shall mean the individual Borrower identified as the “Auburn Cord Borrower” on Schedule III attached hereto and made a part hereof.

“Auburn Cord Owner” shall mean the individual Owner identified as the “Auburn Cord Owner” on Schedule V attached hereto and made a part hereof.

“Auburn Cord Plaza Property” shall mean the Individual Property identified as the “Auburn Cord Plaza Property” on Schedule IV attached hereto and made a part hereof.

“Available Cash” shall have the meaning set forth in the Senior Loan Agreement.

“Award” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation.

“Bail-In Action” shall have the meaning set forth in Section 17.16.

“Bail-In Legislation” shall have the meaning set forth in Section 17.16.

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (b) such Person soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of the Collateral or the Property, as applicable; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due or (f) such Person taking any action in furtherance of any of the foregoing.

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy”, as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights.

“Borrower” shall have the meaning set forth in the introductory paragraph hereof.

“Borrower Party” shall mean any Person acting on behalf of or at the direction of Borrower, Owner, Guarantor and/or Sponsor.

“Broker” shall have the meaning set forth in Section 17.17 hereof.

“Burlington Borrower” shall mean the individual Borrower identified as the “Burlington Borrower” on Schedule III attached hereto and made a part hereof.

“Burlington Owner” shall mean the individual Owner identified as the “Burlington Owner” on Schedule V attached hereto and made a part hereof.

“Burlington Plaza West Property” shall mean the Individual Property identified as the “Burlington Plaza West Property” on Schedule IV attached hereto and made a part hereof.

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in the State of New York are not open for business.

“Cash Trap Event Period” shall have the meaning set forth in the Senior Loan Agreement (and Lender may conclusively rely on any notice from Senior Lender of such Cash Trap Event Period without any inquiry into the validity thereof).

“Casualty” shall have the meaning set forth in Section 7.2 hereof.

“Cause” shall mean with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute bad faith, willful disregard of, or gross negligence with respect to such Independent Director’s duties, (ii) such Independent Director has engaged in or has been charged with or has been indicted or convicted for any crime or crimes of fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) such Independent Director has breached his or her duties of loyalty and care as and to the extent of such duties in accordance with the terms of Borrower’s organizational documents, (iv) there is a material increase in the fees charged by such Independent Director or a material change to such Independent Director’s terms of service, (v) such Independent Director is unable to perform his or her duties as Independent Director due to death, disability or incapacity, or (vi) such Independent Director no longer meets the criteria provided in the definition of Independent Director set forth herein.

“Closing Date” shall mean the date of the funding of the Loan.

“Collateral” shall mean collectively, the Collateral (as such term is defined in each Security Instrument) and shall also include all amounts at any time and from time to time on deposit in any Account and any and all other property or collateral in which Lender is granted a security interest under any of the Loan Documents, in each case whether existing on the date hereof or hereafter pledged or assigned to Lender, including, without limitation the Pledged Equity.

“Colorado Mortgage” shall have the meaning assigned to the term “Colorado Security Instrument” in the Senior Loan Agreement.

“Colorado Property” shall mean the “Property” as defined in the Colorado Mortgage.

“Condemnation” shall mean a temporary or permanent taking by any Governmental Authority as the result, in lieu or in anticipation, of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“Consent of Manager” shall mean that certain Consent of Manager dated as of the date hereof by Borrower, Owner, Manager and Lender in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Constituent Members” shall have the meaning set forth in Section 5.2(c) hereof.

“Contractual Obligation” shall mean, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party, or by which it or any of its property is bound, or any provision of the foregoing.

“Control” shall mean the power to direct, or cause the direction of, the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise.

“Covered Rating Agency Information” shall have the meaning set forth in Section 11.2 hereof.

“Creditors’ Rights Laws” shall mean any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

“Crowdfunded Person” shall mean a Person capitalized primarily by monetary contributions (a) of less than \$35,000 each from more than 35 investors who are individuals and (b) which are funded primarily (i) in reliance upon Regulation Crowdfunding promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended and/or (ii) through internet-mediated registries, platforms or similar portals, mail-order subscriptions, benefit events and/or other similar methods.

“Cumberland Borrower” shall mean the individual Borrower identified as the “Cumberland Borrower” on Schedule III attached hereto and made a part hereof.

“Cumberland Owner” shall mean the individual Owner identified as the “Cumberland Owner” on Schedule V attached hereto and made a part hereof.

“Cumberland Place Property” shall mean the Individual Property identified as the “Cumberland Place Property” on Schedule IV attached hereto and made a part hereof.

“Debt” shall mean the outstanding principal balance of the Loan, together with all interest accrued and unpaid thereon, and all other sums due to Lender in respect of the Loan under the Note, this Agreement or any other Loan Document.

“Debt Service” shall mean, with respect to any particular period of time, scheduled principal and/or interest payments under the Loan.

“Debt Service Coverage Ratio” shall have the meaning set forth on Exhibit B attached hereto and made a part hereof. All capitalized terms in such definition are also set forth on Exhibit B.

“Debt Stack Percentage” shall mean a fraction (expressed as a percentage), that has a numerator equal to the then outstanding principal balance of the Loan and a denominator equal to the Aggregate Outstanding Principal Balance.

“Debt Yield” shall have the meaning set forth on Exhibit B attached hereto and made a part hereof. All capitalized terms in such definition are also set forth on Exhibit B.

“Default” shall mean the occurrence of any event hereunder or under the Note or the other Loan Documents which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the Maximum Legal Rate, or (ii) five percent (5%) above the Interest Rate.

“Defeasance Event” shall mean a Total Defeasance Event or a Partial Defeasance Event, as applicable.

“Defeasance Lockout Release Date” shall have the meaning set forth in the Senior Loan Agreement.

“Defined Benefit Plan” shall mean a plan, document, agreement, or arrangement currently or previously maintained or sponsored by Owner, Borrower or by any ERISA Affiliate or to which either Borrower or ERISA Affiliate currently makes, or previously made, contributions and which (i) provides or is expected to provide retirement benefits to employees or other workers and (ii) Owner or Borrower could reasonably be expected to have any liability (including liability attributable from an ERISA Affiliate). A Defined Benefit Plan shall include any plan that if it were terminated at any time, would result in Owner or Borrower or ERISA Affiliate being deemed to be a “contributing sponsor” (as defined in Section 4001(a)(13) of ERISA) of the terminated plan pursuant to ERISA Section 4069. A Defined Benefit Plan does not include a Multiemployer Plan.

“Disclosure Document” shall have the meaning set forth in Section 11.2 hereof.

“Eastman Borrower” shall mean the individual Borrower identified as the “Eastman Borrower” on Schedule III attached hereto and made a part hereof.

“Eastman Owner” shall mean the individual Owner identified as the “Eastman Owner” on Schedule V attached hereto and made a part hereof.

“Eastman Shopping Center Property” shall mean the Individual Property identified as the “Eastman Shopping Center Property” on Schedule IV attached hereto and made a part hereof.

“EEA Financial Institution” shall have the meaning set forth in Section 17.16 hereof.

“EEA Member Country” shall have the meaning set forth in Section 17.16 hereof.

“EEA Resolution Authority” shall have the meaning set forth in Section 17.16 hereof.

“Eligible Account” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts (or subaccounts thereof) maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts (or subaccount thereof) maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b),

having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“Eligible Institution” shall mean (a) a depository institution or trust company insured by the Federal Deposit Insurance Corporation, (i) the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” (or its equivalent) from each of the Rating Agencies in the case of accounts in which funds are held for thirty (30) days or less and (ii) the senior unsecured debt obligations of which are rated at least “A” (or its equivalent) from each of the Rating Agencies in the case of accounts in which funds are held for more than thirty (30) days or (b) such other depository institution otherwise approved by the Rating Agencies from time-to-time; provided, however, for the purposes of the Senior Loan Cash Management Bank, the definition of Eligible Institution shall have the meaning set forth in the Senior Loan Cash Management Agreement.

“Embargoed Person” shall have the meaning set forth in Section 3.28 hereof.

“Environmental Indemnity” shall mean that certain Environmental Indemnity Agreement - Mezzanine, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Environmental Insurance Policy” shall mean individually or collectively, as the context may require, (i) that certain Pollution Legal Liability Plus (PLLP) policy issued by Sirius International Insurance Corp. – UK Branch for the benefit of Lender and Senior Lender with respect to the Cumberland Place Property and (ii) that certain Pollution Legal Liability Plus (PLLP) policy issued by Sirius International Insurance Corp. – UK Branch for the benefit of Lender and Senior Lender with respect to the Seven Hills Plaza Property.

“Environmental Laws” shall have the meaning set forth in the Environmental Indemnity.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may heretofore have been or may hereafter be amended, restated, replaced or otherwise modified.

“ERISA Affiliate” shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with Borrower and Owner, are treated as a single employer under any or all of Sections 414(b), (c), (m) or (o) of the Code.

“EU Bail-In Legislation Schedule” shall have the meaning set forth in Section 17.16 hereof.

“Event of Default” shall have the meaning set forth in Section 10.1 hereof.

“Exchange Act” shall have the meaning set forth in Section 11.2 hereof.

“Exchange Act Filing” shall mean any filing under or pursuant to the Exchange Act in connection with or relating to a Securitization.

“Exculpated Parties” shall have the meaning set forth in Section 13.1 hereof.

“Flood Insurance Acts” shall have the meaning set forth in Section 7.1 hereof.

“GAAP” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“Georgia Mortgage” shall have the meaning assigned to the term “Georgia Security Instrument” in the Senior Loan Agreement.

“Georgia Property” shall mean the “Property” as defined in the Georgia Mortgage.

“Government List” shall mean (i) OFAC, (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrower in writing is now included in “Government Lists”, or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in “Government Lists”.

“Governmental Authority” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“Guarantor” shall mean Jonathan M. Larmore, a natural person.

“Guaranty” shall mean that certain Guaranty of Recourse Obligations – Mezzanine executed by Guarantor and dated as of the date hereof.

“Hazardous Substances” shall have the meaning set forth in the Environmental Indemnity.

“Heather Glen Borrower” shall mean the individual Borrower identified as the “Heather Glen Borrower” on Schedule III attached hereto and made a part hereof.

“Heather Glen Owner” shall mean the individual Owner identified as the “Heather Glen Owner” on Schedule V attached hereto and made a part hereof.

“Heather Glen Property” shall mean the Individual Property identified as the “Heather Glen Property” on Schedule IV attached hereto and made a part hereof.

“Illinois Mortgage” shall have the meaning assigned to the term “Illinois Security Instrument” in the Senior Loan Agreement.

“Illinois Property” shall mean the “Property” as defined in the Illinois Mortgage.

“Immediate Repairs” shall mean the repairs at the Property as set forth on Schedule 1 of the Senior Loan Agreement.

“Improvements” shall have the meaning set forth in the granting clause of the Mortgage.

“Indebtedness” shall mean, for any Person, without duplication: (i) all indebtedness or liability of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property or services for which such Person or its assets is liable, (ii) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (iii) all amounts required to be paid by such Person pursuant to any agreement to purchase, to provide funds for payment, to supply funds, or to invest in any Person, (iv) all indebtedness or liabilities guaranteed by such Person, directly or indirectly, (v) all obligations under leases that constitute capital leases for which such Person is liable, (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss, (vii) all obligations under any PACE Loans, and (viii) any other similar amounts.

“Indemnified Parties” shall mean (a) Lender, (b) any successor owner or holder of the Loan or participations in the Loan, (c) any Servicer or prior Servicer of the Loan, (d) any Investor or any prior Investor in any Securities, (e) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (f) any receiver or other fiduciary appointed in a foreclosure or other Creditors’ Rights Laws proceeding, (g) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (h) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, division, consolidation or acquisition of all or a substantial portion of the Indemnified Parties’ assets and business) in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

“Independent Director” shall have the meaning set forth in Section 5.2 hereof.

“Indiana Mortgage” shall have the meaning assigned to the term “Indiana Security Instrument” in the Senior Loan Agreement.

“Indiana Property” shall mean the “Property” as defined in the Indiana Mortgage.

“Individual Collateral” shall mean, with respect to each Borrower, the Collateral (as such term is defined in the related Security Instrument), including, without limitation the related Pledged Equity.

“Individual Property” shall mean each of the individual parcels of real property described in the Mortgages, together with the Improvements thereon and all Personal Property owned by the related Owner and encumbered by each Mortgage, together with all rights pertaining to such Individual Property and Improvements, as more particularly described in Article 1 of each Mortgage and referred to therein as the “Property”. A list of the Individual

Properties owned by each Owner is attached hereto as Schedule IV, which are sometimes referred to herein collectively as the “**Properties**”.

“**Insurance Premiums**” shall have the meaning set forth in Section 7.1 hereof.

“**Intercreditor Agreement**” shall mean any intercreditor agreement between Senior Lender, as senior lender, and Lender, as mezzanine lender, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Interest Accrual Period**” shall mean the period beginning on the fifth (5th) day of each calendar month during the term of the Loan and ending on (but including) the fourth (4th) day of the following calendar month.

“**Interest Rate**” shall mean a rate per annum equal to **12.0%**.

“**Interest Shortfall**” shall mean, with respect to any prepayment received by Lender on a date other than a Monthly Payment Date, the amount of interest which would have accrued thereon to the next Monthly Payment Date.

“**Investor**” shall mean any investor or potential investor in the Loan (or any portion thereof or interest therein) in connection with a Securitization of the Loan (or any portion thereof or interest therein).

“**Iowa Mortgage**” shall have the meaning assigned to the term “Iowa Security Instrument” in the Senior Loan Agreement.

“**Iowa Property**” shall mean the “Property” as defined in the Iowa Mortgage.

“**IRS Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time or any successor statute.

“**Land**” shall have the meaning set forth in the Mortgage.

“**Lease**” shall mean any and all leases, subleases, rental agreements and other agreements whether or not in writing affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Owner of any petition for relief under Creditors’ Rights Laws.

“**Lease Termination Payments**” shall mean (i) all fees, penalties, commissions or other payments made to Owner in connection with or relating to the rejection, buy-out, termination, surrender or cancellation of any Lease (including in connection with any bankruptcy proceeding), (ii) any security deposits or proceeds of letters of credit held by Owner in lieu of cash security deposits, which Owner is permitted to retain pursuant to the applicable provisions of any Lease and (iii) any payments made to Owner relating to unamortized tenant improvements and leasing commissions under any Lease.

“**Lender**” shall have the meaning set forth in the introductory paragraph hereof.

“Liabilities” shall have the meaning set forth in Section 11.2 hereof.

“Licenses” shall have the meaning set forth in Section 3.11(a) hereof.

“Liquidation Event” means (i) any Casualty to the Property or any portion thereof, (ii) any Condemnation of the Property or any portion thereof, (iii) the receipt by Owner of any excess proceeds realized under its Owner’s Title Policy after application of such proceeds by Owner to cure any title defect, (iv) a Transfer of the Property or any part thereof in connection with realization thereon following an Event of Default (as defined under the Senior Loan), including, without limitation, a foreclosure sale or deed in lieu of foreclosure, or (v) any refinancing or payoff of the Property or the Senior Loan whether or not permitted hereunder (including any refund of reserves on deposit with Senior Lender (but not disbursements therefrom)).

“LLC Agreement” shall have the meaning set forth in Section 5.1(d) hereof.

“Loan” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“Loan Documents” shall mean, collectively, this Agreement, the Note, the Security Instrument, the Environmental Indemnity, the Consent of Manager, the Guaranty and all other documents executed and/or delivered in connection with the Loan.

“Loan to Value Ratio” shall mean the ratio, as of the date of its calculation, calculated by Lender (expressed as a percentage) in which (A) the numerator is equal to the sum of (x) the then outstanding principal balance of the Loan, and (y) the then outstanding principal balance of the Senior Loan, and (B) the denominator is equal to the Appraised Value of the Property (or related Individual Properties, as the context and the terms of this Agreement may require), in the aggregate, as determined in Lender’s sole discretion.

“Longview Borrower” shall mean the individual Borrower identified as the **“Longview Borrower”** on Schedule III attached hereto and made a part hereof.

“Longview Owner” shall mean the individual Owner identified as the **“Longview Owner”** on Schedule V attached hereto and made a part hereof.

“Longview Center Property” shall mean the Individual Property identified as the **“Longview Center Property”** on Schedule IV attached hereto and made a part hereof.

“Losses” shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities and any impairment of Lender’s security for the Loan), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense).

“Louisiana Mortgage” shall have the meaning assigned to the term **“Louisiana Security Instrument”** in the Senior Loan Agreement.

“Louisiana Property” shall mean the **“Property”** as defined in the Louisiana Mortgage.

“Main Street Borrower” shall mean the individual Borrower identified as the “Main Street Borrower” on Schedule III attached hereto and made a part hereof.

“Main Street Owner” shall mean the individual Owner identified as the “Main Street Owner” on Schedule V attached hereto and made a part hereof.

“Main Street Office Property” shall mean the Individual Property identified as the “Main Street Office Property” on Schedule IV attached hereto and made a part hereof.

“Major Lease” shall mean (i) any Lease which, individually or when aggregated with all other Leases with the same Tenant or its Affiliate, either (A) accounts for 20% or more of the total rental income for any Individual Property, or (B) demises 20% or more of any Individual Property’s gross leasable area, (ii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property, and (iii) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i) and/or (ii) above.

“Management Agreement” shall mean individually or collectively, as the context may require, each of the management agreements entered into by and between each Owner and the current Manager or any replacement management agreement entered into by and between Owner and any Manager in accordance with the terms hereof and of the other Loan Documents, pursuant to which Manager is to provide management and other services with respect to the Property as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms and provisions of this Agreement.

“Manager” shall mean Arciterra Companies, LLC, an Arizona limited liability company, or such other entity selected as the manager of the Property in accordance with the terms of this Agreement or the other Loan Documents.

“Material Adverse Effect” shall mean a material adverse effect on (i) any Individual Collateral or Individual Property, (ii) the business, profits, management, operations or condition (financial or otherwise) of any Borrower, Owner, Guarantor, Sponsor, any Individual Collateral or any Individual Property, (iii) the enforceability or validity of any Loan Document, the perfection or priority of any lien created under any Loan Document or the rights, interests and remedies of Lender under any Loan Document, (iv) the ability of any Borrower to perform its obligations under any Loan Document or the ability of Owner to perform its obligations under any Senior Loan Document, or (v) the ability of Guarantor to perform its obligations under the Guaranty or the Environmental Indemnity.

“Material Agreements” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of any Individual Property, other than the Management Agreement and the Leases, as to which either (i) there is an obligation of Borrower or Owner to pay more than \$25,000 per annum; or (ii) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

“Maturity Date” shall mean March 5, 2030 or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“Maximum Legal Rate” shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“Mayodan Borrower” shall mean the individual Borrower identified as the “Mayodan Borrower” on Schedule III attached hereto and made a part hereof.

“Mayodan Owner” shall mean the individual Owner identified as the “Mayodan Owner” on Schedule V attached hereto and made a part hereof.

“Mayodan Shopping Center Property” shall mean the Individual Property identified as the “Mayodan Shopping Center Property” on Schedule IV attached hereto and made a part hereof.

“Member” shall have the meaning set forth in Section 5.1(d) hereof.

“Mezzanine Cash Collateral Account” shall have the meaning set forth in Section 8.3.

“Mezzanine Cash Collateral Funds” shall have the meaning set forth in Section 8.3.

“Mezzanine Loan Accounts” shall have the meaning set forth in Section 8.1.

“Mezzanine Loan Reserve Funds” shall have the meaning set forth in Section 8.2 hereof.

“Monthly Debt Service Payment Amount” shall mean a constant monthly payment of \$102,861.26. The parties acknowledge that such constant monthly payment does not always cover the interest due each month and in those instances (as shown on the amortization schedule attached as Schedule VI), the unpaid interest is added to the principal amount of the Loan.

“Monthly Operating Expense Amount” shall mean, collectively, (A) the monthly amount payable for Operating Expenses as set forth in the Annual Budget not otherwise paid or reserved for in the Accounts and (B) any extraordinary expenses which are not set forth in the Annual Budget and are (x) incurred by Borrower in connection with the operation and maintenance of the Property and (y) approved by Lender.

“Monthly Payment Date” shall mean the fifth (5th) day of every calendar month occurring during the term of the Loan.

“Moody’s” shall mean Moody’s Investor Service, Inc.

“Mortgage” shall mean, individually or collectively, as the context may require, the Colorado Mortgage, the Georgia Mortgage, the Illinois Mortgage, the Indiana Mortgage, the Iowa Mortgage, the Louisiana Mortgage, the New York Mortgage, the North Carolina Mortgage and the Texas Mortgage.

“Multiemployer Plan” shall mean a “multiemployer plan” as defined in Section 3(37) of ERISA or Section 4001(a)(3) of ERISA, and to which Borrower or any ERISA Affiliate is making, is obligated to make or has made or been obligated to make during the last six years, contributions on behalf of participants who are or were employed by any of them.

“Net Liquidation Proceeds After Debt Service” shall mean with respect to any Liquidation Event, all amounts paid to or received by or on behalf of Owner in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, less (i) Lender's and/or Senior Lender's reasonable costs incurred in connection with the recovery thereof, (ii) in the case of Casualty or Condemnation, the costs incurred by Owner in connection with a restoration of the Property made in accordance with the Senior Loan Documents, (iii) amounts required or permitted to be deducted therefrom and amounts paid pursuant to the Senior Loan Documents to Senior Lender, (iv) in the case of a foreclosure sale, disposition or transfer of the Property in connection with realization thereon following an Event of Default under the Senior Loan, such reasonable and customary costs and expenses of sale or other disposition (including attorneys' fees and brokerage commissions), (v) in the case of a foreclosure sale, such costs and expenses incurred by Senior Lender under the Senior Loan Documents as Senior Lender shall be entitled to receive reimbursement for under the terms of the Senior Loan Documents and (vi) in the case of a refinancing of the Senior Loan, such costs and expenses (including reasonable attorneys' fees) of such refinancing as shall be reasonably approved by Lender.

“Net Proceeds” shall mean: (i) the net amount of all insurance proceeds payable as a result of a Casualty to any Individual Property, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees), if any, in collecting such insurance proceeds, or (ii) the net amount of the Award, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees), if any, in collecting such Award.

“Net Sales Proceeds” shall mean, with respect to the sale of any Individual Property, the gross proceeds of such sale less all reasonable and customary transaction costs approved by Lender in its reasonable discretion (provided that in no event shall Net Sales Proceeds be less than ninety-four percent (94%) of the gross proceeds of any such sale).

“New Manager” shall have the meaning set forth in Section 4.15 hereof.

“New Non-Consolidation Opinion” shall mean a substantive non-consolidation opinion provided by outside counsel acceptable to Lender and the Rating Agencies and otherwise in form and substance acceptable to Lender and the Rating Agencies.

“New York Mortgage” shall have the meaning assigned to the term “New York Security Instrument” in the Senior Loan Agreement.

“New York Property” shall mean the “Property” as defined in the New York Mortgage.

“Non-Consolidation Opinion” shall mean that certain substantive non-consolidation opinion delivered to Lender by Greenberg Traurig, LLP in connection with the closing of the Loan.

“North Carolina Mortgage” shall have the meaning assigned to the term “North Carolina Security Instrument” in the Senior Loan Agreement.

“North Carolina Property” shall mean the “Property” as defined in the North Carolina Mortgage.

“Note” shall mean that certain Promissory Note – Mezzanine Loan of even date herewith in the principal amount of \$10,000,000, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, extended, supplemented or otherwise modified from time to time.

“OFAC” shall have the meaning set forth in Section 3.28 hereof.

“Officer’s Certificate” shall mean a certificate delivered to Lender by Borrower which is signed by Responsible Officer of Borrower.

“O&M Program” shall have the meaning set forth in Section 4.24.

“Open Period Start Date” shall mean the date that is three (3) months prior to the Maturity Date.

“Other Charges” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Individual Property, now or hereafter levied, assessed or imposed against any Individual Property, any Individual Collateral or any part thereof.

“Owner” shall mean each of the entities set forth on Schedule V attached hereto, together with its successors and permitted assigns.

“Owner’s Title Policy” shall mean those certain title insurance policies of Owner issued with respect to the Property on or before the Closing Date.

“PACE Loan” shall mean (x) any “Property-Assessed Clean Energy loan” or (y) any other indebtedness, without regard to the name given to such indebtedness, which is (i) incurred for improvements to the Property for the purpose of increasing energy efficiency, increasing use of renewable energy sources, resource conservation, or a combination of the foregoing, and (ii) repaid through multi-year assessments against the Property.

“Partial Defeasance Event” shall have the meaning set forth in Section 2.8(a) hereof.

“Patriot Act” shall have the meaning set forth in Section 3.29 hereof.

“Patriot Act Offenses” shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed

within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. “Patriot Act Offense” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense.

“**Permitted Encumbrances**” shall mean (i) with respect to the Collateral, the lien and security interests created by the Loan Documents and (ii) with respect to the Property, the meaning assigned to the term “Permitted Encumbrances” in the Senior Loan Agreement.

“**Permitted Equity Transfer**” shall have the meaning set forth in Section 6.2 hereof.

“**Permitted Investments**” shall mean the following, subject to qualifications hereinafter set forth:

(i) obligations of, or obligations guaranteed as to principal and interest by, the U.S. government or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America;

(ii) federal funds, unsecured certificates of deposit, time deposits, banker’s acceptances, and repurchase agreements having maturities of not more than 365 days of any bank, the short-term debt obligations of which are rated A-1+ (or the equivalent) by each of the Rating Agencies, it being understood that the A-1+ benchmark rating and other benchmark ratings in this Agreement are intended to be the ratings, or the equivalent of ratings, issued by S&P;

(iii) deposits that are fully insured by the Federal Deposit Insurance Corp.;

(iv) debt obligations that are rated AA (or the equivalent) by each of the Rating Agencies having maturities of not more than 365 days;

(v) commercial paper rated A-1+ (or the equivalent) by each of the Rating Agencies;

(vi) investment in money market funds rated AAAM or AAAM-G (or the equivalent) by each of the Rating Agencies; and

(vii) such other investments reasonably acceptable to Lender.

Notwithstanding the foregoing, “**Permitted Investments**” (i) shall exclude any security with the S&P’s “r” symbol (or any other Rating Agency’s corresponding symbol) attached to the rating (indicating high volatility or dramatic fluctuations in their expected returns because of market risk), as well as any mortgage-backed securities and any security of the type commonly known as “strips”; (ii) shall not have maturities in excess of one year; (iii) shall be limited to those instruments that have a predetermined fixed dollar of principal due at maturity that cannot vary or change; and (iv) shall exclude any investment where the right to receive principal and interest derived from the underlying investment provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment. Interest may either be fixed or

variable, and any variable interest must be tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with that index. No investment shall be made which requires a payment above par for an obligation if the obligation may be prepaid at the option of the issuer thereof prior to its maturity. All investments shall mature or be redeemable upon the option of the holder thereof on or prior to the earlier of (x) three months from the date of their purchase or (y) the Business Day preceding the day before the date such amounts are required to be applied hereunder.

“Permitted Property Transfer” shall have the meaning set forth in Section 6.3 hereof.

“Permitted Transfer” shall mean (i) a Permitted Equity Transfer, (ii) a Permitted Property Transfer, (iii) a Lease entered into in accordance with the terms hereof, and/or (iv) any Permitted Encumbrances and/or any other transfer expressly permitted under the terms of this Agreement.

“Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any other entity, any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Personal Property” shall have the meaning set forth in the granting clause of each Mortgage and shall include, with respect to the Louisiana Property, the “Movable Property” (as defined in the Louisiana Mortgage).

“Pine Tree Borrower” shall mean the individual Borrower identified as the “Pine Tree Borrower” on Schedule III attached hereto and made a part hereof.

“Pine Tree Owner” shall mean the individual Owner identified as the “Pine Tree Owner” on Schedule V attached hereto and made a part hereof.

“Pine Tree Plaza Property” shall mean the Individual Property identified as the “Pine Tree Plaza Property” on Schedule IV attached hereto and made a part hereof.

“Plainfield Village Borrower” shall mean the individual Borrower identified as the “Plainfield Village Borrower” on Schedule III attached hereto and made a part hereof

“Plainfield Village Owner” shall mean the individual Owner identified as the “Plainfield Village Owner” on Schedule V attached hereto and made a part hereof

“Plainfield Village Property” shall mean the Individual Property identified as the “Plainfield Village Property” on Schedule IV attached hereto and made a part hereof.

“Pledged Equity” shall mean, individually or collectively, as the context may require, the “Pledged Equity” as such term is defined in the Security Instrument.

“Policies” shall have the meaning set forth in the Senior Loan Agreement.

“Prohibited Transfer” shall have the meaning set forth in the Senior Loan Agreement.

“Property” shall mean, individually or collectively, as the context may require, the Colorado Property, the Georgia Property, the Illinois Property, the Indiana Property, the Iowa Property, the Louisiana Property, the New York Property, the North Carolina Property and the Texas Property.

“Proportionate Loan Amount” shall mean, with respect to a particular Property, the amount derived by multiplying (x) the then outstanding principal balance of the Loan by (y) a fraction, the numerator of which is the Allocated Loan Amount (as defined in the Senior Loan Agreement) with respect to such Property and the denominator of which is the original principal balance of the Senior Loan.

“Provided Information” shall have the meaning set forth in Section 11.2(b) hereof.

“Qualified Insurer” shall have the meaning set forth in Section 7.1 hereof.

“Qualified Manager” shall have the meaning set forth in the Consent of Manager.

“Qualified Transferee” shall mean a transferee for whom, prior to the Transfer, Lender shall have received evidence that the proposed transferee (1) has never been convicted of a felony, (2) has never been indicted or convicted for a Patriot Act Offense and is not on any Government List, (3) has never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding, and (4) has no material outstanding judgments or litigations or regulatory actions continuing or threatened against such proposed transferee or its interests.

“Rating Agencies” shall mean each of S&P; Moody’s; Fitch, Inc.; DBRS, Inc.; Kroll Bond Rating Agency, Inc.; and Morningstar Credit Ratings, LLC, or any successor thereto, or any other nationally-recognized statistical rating agency which has been approved by Lender, but only to the extent that such Rating Agency has been designated by Lender, or is anticipated to be designated by Lender, in connection with any Secondary Market Transaction.

“REA” shall mean, individually and/or collectively (as the context may require), those certain agreements set forth on Schedule VI attached to the Senior Loan Agreement and each other reciprocal easement, covenant, condition and restriction agreement or similar agreement affecting any Individual Property and any future reciprocal easement or similar agreement affecting any Individual Property entered into in accordance with the applicable terms and conditions hereof.

“Registrar” shall have the meaning set forth in Section 11.8 hereof.

“Registration Statement” shall have the meaning set forth in Section 11.2 hereof.

“Regulation AB” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

“Related Loan” shall mean a loan made to an Affiliate of Borrower, or secured by a Related Property, that is included with the Loan (or a portion of the Loan) in a Securitization.

“Related Property” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related”, within the meaning of the definition of Significant Obligor, to the Property.

“Release Amount” shall mean, in connection with a Partial Defeasance Event of the Senior Loan with respect to a Release Property, an amount equal to the greater of (i) the Debt Stack Percentage of the Net Sales Proceeds with respect to such Release Property and (ii) 125% of the Allocated Loan Amount related to the applicable Release Collateral.

“Release Collateral” shall mean the Individual Collateral subject to a Partial Defeasance Event.

“Release Property” shall mean the Individual Property subject to a Partial Defeasance Event.

“Remaining Collateral” shall mean, collectively, the Collateral remaining subject to the lien of the Security Instrument after the occurrence of a Partial Defeasance Event with respect to the Release Collateral.

“Remaining Property” shall mean each Individual Property remaining subject to the lien of any remaining Mortgage after the occurrence of a Partial Defeasance Event with respect to the Release Property.

“Rent Loss Proceeds” shall have the meaning set forth in Section 7.1 hereof.

“Rent Roll” shall have the meaning set forth in Section 3.18 hereof.

“Rents” shall have the meaning set forth in each Mortgage.

“Replacements” for any period shall mean amounts expended for replacements and/or alterations to any Individual Property and required to be capitalized according to GAAP and reasonably approved by Lender.

“Reporting Failure” shall have the meaning set forth in Section 4.12 hereof.

“Required Financial Item” shall have the meaning set forth in Section 4.12 hereof.

“Reserve Funds” shall have the meaning set forth in the Senior Loan Agreement.

“Responsible Officer” shall mean with respect to a Person, the chairman of the board, president, chief operating officer, chief financial officer, treasurer or vice president of such Person or such other similar officer of such Person reasonably acceptable to Lender and appropriately authorized by the applicable Person in a manner reasonably acceptable to Lender.

“Restoration” shall have the meaning set forth in Section 7.2 hereof.

“Restricted Party” shall mean any Borrower, any Owner, Sponsor, Guarantor, any Affiliated Manager, or any shareholder, partner, member or non-member manager, or any direct

or indirect legal or beneficial owner of any Borrower, any Owner, Sponsor, Guarantor, any Affiliated Manager or any non-member manager.

“Sale or Pledge” shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, lien, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) a legal or beneficial interest.

“Secondary Market Transaction” shall have the meaning set forth in Section 11.1 hereof.

“Securities” shall have the meaning set forth in Section 11.1 hereof.

“Securities Act” shall have the meaning set forth in Section 11.2 hereof.

“Securitization” shall have the meaning set forth in Section 11.1 hereof.

“Security Instrument” shall mean, individually or collectively, as the context may require, each Mezzanine Pledge and Security Agreement, dated as of the date hereof, entered into between a Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Senior Lender” means **Grass River Real Estate Credit Partners Loan Funding, LLC**, a Delaware limited liability company, together with any subsequent holder of the Senior Loan to whom the Senior Loan has been assigned or transferred pursuant to the terms of the Intercreditor Agreement.

“Senior Loan” means that certain loan in the original principal amount of \$60,000,000 made of even date herewith by Senior Lender to Owner.

“Senior Loan Agreement” means that certain Loan Agreement, dated as of the date hereof, by and between Owner and Senior Lender, as the same may be amended, modified and/or supplemented from time to time.

“Senior Loan Cash Management Account” shall have the meaning set forth in the Senior Loan Agreement.

“Senior Loan Cash Management Agreement” shall have the meaning assigned to the term “Cash Management Agreement” in the Senior Loan Agreement.

“Senior Loan Cash Management Bank” shall have the meaning assigned to the term “Cash Management Bank” in the Senior Loan Agreement.

“Senior Loan Cash Management Provisions” shall mean the terms and conditions of the Senior Loan Documents relating to cash management (including, without limitation, those relating to the Senior Loan Clearing Account, Senior Loan Clearing Account Agreement, Senior Loan Cash Management Account and Senior Loan Cash Management Agreement).

“Senior Loan Clearing Account” shall have the meaning assigned to the term “Clearing Account” in the Senior Loan Agreement.

“Senior Loan Clearing Account Agreement” shall have the meaning assigned to the term “Clearing Account Agreement” in the Senior Loan Agreement.

“Senior Loan Clearing Bank” shall have the meaning assigned to the term “Clearing Bank” in the Senior Loan Agreement.

“Senior Loan Debt Service” means, with respect to any particular period of time, scheduled principal and/or interest payments due under the Senior Loan Agreement.

“Senior Loan Documents” means all documents evidencing and/or securing the Senior Loan and all documents executed and/or delivered in connection therewith, as the same may be amended, modified and/or supplemented from time to time.

“Senior Loan Event of Default” means an Event of Default under and as defined in the Senior Loan Documents (and Lender may conclusively rely on any notice from Senior Lender of such Senior Loan Event of Default without any inquiry into the validity thereof).

“Senior Loan Outstanding Principal Balance” means, as of any date, the outstanding principal balance of the Senior Loan.

“Senior Loan Subaccounts” shall have the meaning set forth in the Senior Loan Agreement.

“Servicer” shall have the meaning set forth in Section 11.4 hereof.

“Seven Hills Borrower” shall mean the individual Borrower identified as the “Seven Hills Borrower” on Schedule III attached hereto and made a part hereof.

“Seven Hills Owner” shall mean the individual Owner identified as the “Seven Hills Owner” on Schedule V attached hereto and made a part hereof.

“Seven Hills Plaza Property” shall mean the Individual Property identified as the “Seven Hills Plaza Property” on Schedule IV attached hereto and made a part hereof.

“Severance Option” shall have the meaning set forth in Section 11.7 hereof.

“Severed Loan Documents” shall have the meaning set forth in Article X hereof.

“Significant Obligor” shall have the meaning set forth in Item 1101(k) of Regulation AB under the Securities Act.

“Single Purpose Entity” shall mean an entity which satisfies all of the requirements of Section 5.1 hereof and whose structure and organizational and governing documents are otherwise in form and substance acceptable to Lender and the Rating Agencies.

“Special Member” shall have the meaning set forth in Section 5.1(d) hereof.

“Sponsor” shall mean Guarantor.

“Sponsor Family Group” shall mean Sponsor and/or his spouse, parents, siblings, children, grandchildren or other lineal descendants and/or family trusts for the benefit of Sponsor and his spouse, children, parents, siblings, grandchildren or other lineal descendants.

“S&P” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“State” shall mean, as to any Individual Property, the state in which such Individual Property or any part thereof is located.

“Successor Borrower” shall have the meaning set forth in Section 2.8 hereof.

“Sweden Borrower” shall mean the individual Borrower identified as the “Sweden Borrower” on Schedule III attached hereto and made a part hereof.

“Sweden Owner” shall mean the individual Owner identified as the “Sweden Owner” on Schedule V attached hereto and made a part hereof.

“Sweden Shopping Center Property” shall mean the Individual Property identified as the “Sweden Shopping Center Property” on Schedule IV attached hereto and made a part hereof.

“Taxes” shall mean all taxes, assessments, water rates, sewer rents, business improvement district or other similar assessments and other governmental impositions, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against any Individual Property, any Individual Collateral or any part thereof. In no event shall any Pace Loan be considered a Tax for purposes of this Agreement.

“Tenant” shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement with Owner.

“Texas Mortgage” shall have the meaning assigned to the term “Texas Security Instrument” in the Senior Loan Agreement.

“Texas Property” shall mean the “Property” as defined in the Texas Mortgage.

“Title Insurance Policy” shall mean, individually or collectively as the context may require, those certain ALTA mortgagee title insurance policies issued with respect to any Property and insuring the lien of the Mortgage.

“Total Defeasance Date” shall have the meaning set forth in Section 2.8 hereof.

“Total Defeasance Event” shall have the meaning set forth in Section 2.8 hereof.

“UCC” or **“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the State of New York; *provided, however*, that if by reason of mandatory provisions

of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

“**UCC Insurance Policy**” shall mean a UCC insurance policy acceptable to Lender.

“**Underwriter Group**” shall have the meaning set forth in Section 11.2 hereof.

“**Updated Information**” shall have the meaning set forth in Section 11.1 hereof.

“**U.S. Obligations**” shall mean “government securities” as defined in Section 2(a)(16) of the Investment Company Act of 1940 and within the meaning of Treasury Regulation Section 1.860G-2(a)(8); provided, that, (i) such “government securities” are not subject to prepayment, call or early redemption, and (ii) the aforesaid laws and regulations shall be deemed to refer to the same as may be and/or may hereafter be amended, restated, replaced or otherwise modified.

“**Ville Platte Borrower**” shall mean the individual Borrower identified as the “Ville Platte Borrower” on Schedule III attached hereto and made a part hereof.

“**Ville Platte Owner**” shall mean the individual Owner identified as the “Ville Platte Owner” on Schedule V attached hereto and made a part hereof.

“**Ville Platte Shopping Center Property**” shall mean the Individual Property identified as the “Ville Platte Shopping Center Property” on Schedule IV attached hereto and made a part hereof.

“**Violations**” shall have the meaning set forth in Section 4.27 of the Senior Loan Agreement.

“**Westgate Borrower**” shall mean the individual Borrower identified as the “Westgate Borrower” on Schedule III attached hereto and made a part hereof.

“**Westgate Owner**” shall mean the individual Owner identified as the “Westgate Owner” on Schedule V attached hereto and made a part hereof.

“**Westgate Plaza Property**” shall mean the Individual Property identified as the “Westgate Plaza Property” on Schedule IV attached hereto and made a part hereof.

“**Work Charge**” shall have the meaning set forth in Section 4.16(a) hereof.

“**Write-Down and Conversion Powers**” shall have the meaning set forth in Section 17.16 hereof.

“**Yield Maintenance Premium**” shall mean an amount equal to the greater of the following two amounts: (a) an amount equal to three percent (3%) of the amount prepaid; or (b) an amount equal to (i) the amount, if any, by which the sum of the present values as of the

prepayment date of all unpaid principal and interest payments required hereunder, calculated by discounting such payments from the respective dates each such payment was due hereunder (or, with respect to the payment required on the Open Period Start Date (assuming the outstanding principal balance of the Loan is due on the Open Period Start Date), from the Open Period Start Date) back to the prepayment date at a discount rate equal to the Periodic Treasury Yield (defined below) exceeds the outstanding principal balance of the Loan as of the prepayment date, *multiplied* by (ii) a fraction whose numerator is the amount prepaid and whose denominator is the outstanding principal balance of the Loan as of the prepayment date. For purposes of the foregoing, “**Periodic Treasury Yield**” shall mean (y) the annual yield to maturity of the actively traded non-callable United States Treasury fixed interest rate security (other than any such security which can be surrendered at the option of the holder at face value in payment of federal estate tax or which was issued at a substantial discount) that has a maturity closest to (whether before, on or after) the Open Period Start Date (or if two or more such securities have maturity dates equally close to the Open Period Start Date, the average annual yield to maturity of all such securities), as reported in The Wall Street Journal or other authoritative publication or news retrieval service on the fifth Business Day preceding the prepayment date, *divided by* (z) 12. Lender’s calculation of the Yield Maintenance Premium, and all component calculations, shall be conclusive and binding on Borrower absent manifest error.

EXHIBIT B**ADDITIONAL DEFINITIONS**

“Adjusted Net Cash Flow” shall mean NOI minus (a) normalized tenant improvement and leasing commission expenditures equal to \$0.80 per square foot per annum, and (b) normalized capital improvements equal to \$0.20 per square foot per annum.

“Debt Service Coverage Ratio” shall mean as of the last day of the calendar month immediately preceding the applicable date of calculation, the quotient obtained by dividing (1) the Adjusted Net Cash Flow by (2) the sum of (a) the aggregate principal and interest projected to be due and payable under the Note over the twelve (12) month period subsequent to the date of calculation (interest only periods will be disregarded for purposes of this calculation) and a 30-year amortization period and (b) the aggregate Senior Loan Debt Service projected to be due and payable over the twelve (12) month period subsequent to the date of calculation (interest only periods will be disregarded for purposes of this calculation) and a 30-year amortization period. Borrower shall deliver to Lender such information as is reasonably required for Lender to make all applicable calculations. Lender’s calculation of the Debt Service Coverage Ratio, and all component calculations, shall be conclusive and binding on Borrower absent manifest error.

“Debt Yield” shall mean, as of the last day of the calendar month immediately preceding the applicable date of determination, the quotient (expressed as a percentage) obtained by dividing (a) Adjusted Net Cash Flow as of such date by (b) the sum of (x) the outstanding principal amount of the Loan as of such date plus (y) the Senior Loan Outstanding Principal Balance as of such date. Lender’s calculation of the Debt Yield, and all component calculations, shall be conclusive and binding on Borrower absent manifest error.

“NOI” shall mean EGI minus Underwritten Operating Expenses.

INCOME

“EGI” shall mean Net Rental Income plus Other Income minus Bad Debt and Rent Concessions.

“Net Rental Income” shall mean Gross Potential Rent plus Expense Reimbursements minus Vacancy Deduction plus Percentage Rent.

“Gross Potential Rent” shall mean gross potential rent, computed in accordance with accounting principles reasonably acceptable to Lender, based on the most recent rent roll annualized, which should include (a) effective rent for occupied space (that is, actual rent collected from tenants in actual physical occupancy pursuant to valid Leases (which may be adjusted downward by Lender to reflect market rents), provided that to the extent a particular tenant is either in a scheduled rent concession period at the time of determination or has a rent concession period scheduled in the future, such tenant’s annualized rent may be adjusted by Lender in its reasonable discretion to reflect a normalized annualized amount unless no future rent is scheduled to be received from such tenant in which case no rent will be included for such tenant) and (b) market rents for vacant space.

“Expense Reimbursements” shall mean expense reimbursements as determined from the most recent operating statement, to the extent deemed recurring and sustainable, determined on a trailing 12-month basis (which should include actual expense reimbursements for occupied space and market expense reimbursements for vacant space and newly-leased space); provided, however, that (a) total Expense Reimbursements cannot exceed one hundred percent (100%) of Owner’s Actual Operating Expenses (as defined in the definition of “Operating Expenses” herein), and (b) if the Underwritten Expenses are used for determination of Operating Expenses, then Lender’s underwritten gross potential expense reimbursements will be used, which equal \$2,512,072.00.

“Vacancy Deduction” shall be determined by multiplying Gross Potential Rent and Expense Reimbursements by the greatest of (a) the actual vacancy at the Property at the time of determination, (b) the then-prevailing market vacancy in the vicinity of the Property, and (c) an imputed vacancy rate of 7.5%.

“Percentage Rent” shall mean percentage rent as determined from the most recent operating statement, to the extent deemed recurring and sustainable, determined on a trailing 12-month basis; provided, however, that for any particular tenant, the aggregate annual rent (including percentage rent) attributed to such tenant cannot exceed market rent.

“Other Income” shall mean all other applicable income as determined from the most recent operating statement for the Property at the time of determination, to the extent such income is deemed recurring and sustainable, determined on a trailing 12-month basis, computed in accordance with accounting principles reasonably acceptable to Lender, including, without limitation (and without duplication), parking income, cellular tower income, vending income and other similar items. Notwithstanding the foregoing, Other Income will not include insurance proceeds (other than proceeds of rent loss, business interruption or other similar insurance allocable to the applicable period); Condemnation Proceeds (other than Condemnation Proceeds arising from a temporary taking or the use and occupancy of all or part of the applicable Property allocable to the applicable period); proceeds of any financing; proceeds of any sale, exchange or transfer of the Property or any part thereof or interest therein (including proceeds of any sales of furniture, fixtures and equipment); capital contributions or loans to Borrower, Owner or an Affiliate of Borrower; any item of income otherwise includable in Other Income but paid directly by any tenant to a Person other than Borrower or Owner; any other extraordinary, non-recurring revenues; payments paid by or on behalf of any tenant under a Lease which is the subject of any proceeding or action relating to its bankruptcy, reorganization or other arrangement pursuant to the Bankruptcy Code or any similar federal or state law or which has been adjudicated a bankrupt or insolvent unless such Lease has been affirmed by the trustee in such proceeding or action pursuant to a final, non-appealable order of a court of competent jurisdiction; payments paid by or on behalf of any tenant under a Lease the demised premises of which are not occupied either by such tenant or an affiliate or sublessee thereof; payments paid by or on behalf of any tenant under a Lease in whole or partial consideration for the termination of any Lease; sales tax rebates from any Governmental Authority; sales, use and occupancy taxes on receipts required to be accounted for by Borrower or Owner to any Governmental Authority; refunds and uncollectible accounts; interest income from any source; unforfeited security deposits, utility and other similar deposits; income from tenants not paying rent; or any disbursements to Borrower

from the Mezzanine Loan Reserve Funds or to Owner from any reserve funds held pursuant to the Senior Loan Agreement.

“Bad Debt” shall mean debt that remains uncollectible after reasonable efforts have been exhausted to collect the debt. Bad Debt will be determined on a trailing 12-month basis.

“Rent Concessions” shall mean any remaining rent concessions for the Leases used to determine Gross Potential Rent (other than any concessions already accounted for in the determination of Gross Potential Rent above) to the extent such rent concessions relate to the forward 12-month period at the time of determination.

EXPENSE

“Underwritten Operating Expenses” shall mean projected annualized Operating Expenses based on a trailing 12-month period adjusted upwards or downwards in Lender’s reasonable discretion by anticipated changes in Operating Expenses.

“Operating Expenses” shall mean the greater of (a) all expenses, computed in accordance with accounting principles reasonably acceptable to Lender, of whatever kind and from whatever source, relating to the ownership, operation, repair, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including, without limitation (and without duplication): Taxes (based on the most current bill annualized, subject to adjustment by Lender to take into account any change in assessment that has not yet been reflected in the most current tax bill); Insurance Premiums (based on the most current premium annualized); management fees (whether or not actually paid) equal to the greater of the actual management fees or 3.0% of EGI; costs attributable to the ordinary operation, repair and maintenance of the Improvements; common area maintenance costs; advertising and marketing expenses; professional fees; license fees; general and administrative costs and expenses; utilities; payroll, benefits and related taxes and expenses; janitorial expenses; computer processing charges; operating equipment or other lease payments as approved by Lender; ground lease payments; bond assessments; and other similar costs and expenses; in each instance, unless otherwise noted, only to the extent actually paid for by Borrower or Owner (the foregoing expenses being referred to herein as **“Actual Operating Expenses”**), or (b) Lender’s underwritten operating expenses at the time of closing (**“Underwritten Expenses”**), which equal \$2,976,757.00. Notwithstanding the foregoing, Operating Expenses shall not include debt service (including principal, interest, impounds and other reserves), Senior Loan Debt Service, capital expenditures, tenant improvement costs, leasing commissions or other expenses which are paid from escrows required by the Loan Documents; any payment or expense for which Borrower or Owner was or is to be reimbursed from proceeds of the loan or the Senior Loan or insurance or by any third party; federal, state or local income taxes; any non-cash charges such as depreciation and amortization; and any item of expense otherwise includable in Operating Expenses which is paid directly by any tenant except real estate taxes paid directly to any taxing authority by any tenant.

In making the calculations described herein, applicable line items may be adjusted by Lender in its reasonable discretion (a) to accurately reflect the amounts of any extraordinary non-recurring items in the relevant period and to reflect on a pro rata basis those items on an annual or semi-

annual basis and (b) to reflect Leases (and projected changes to the applicable line items above) which are either (i) anticipated to terminate within ninety (90) days of the date of calculation or (ii) executed with creditworthy tenants with rent commencement dates scheduled to occur within ninety (90) days of the date of calculation.

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SCHEDULE I

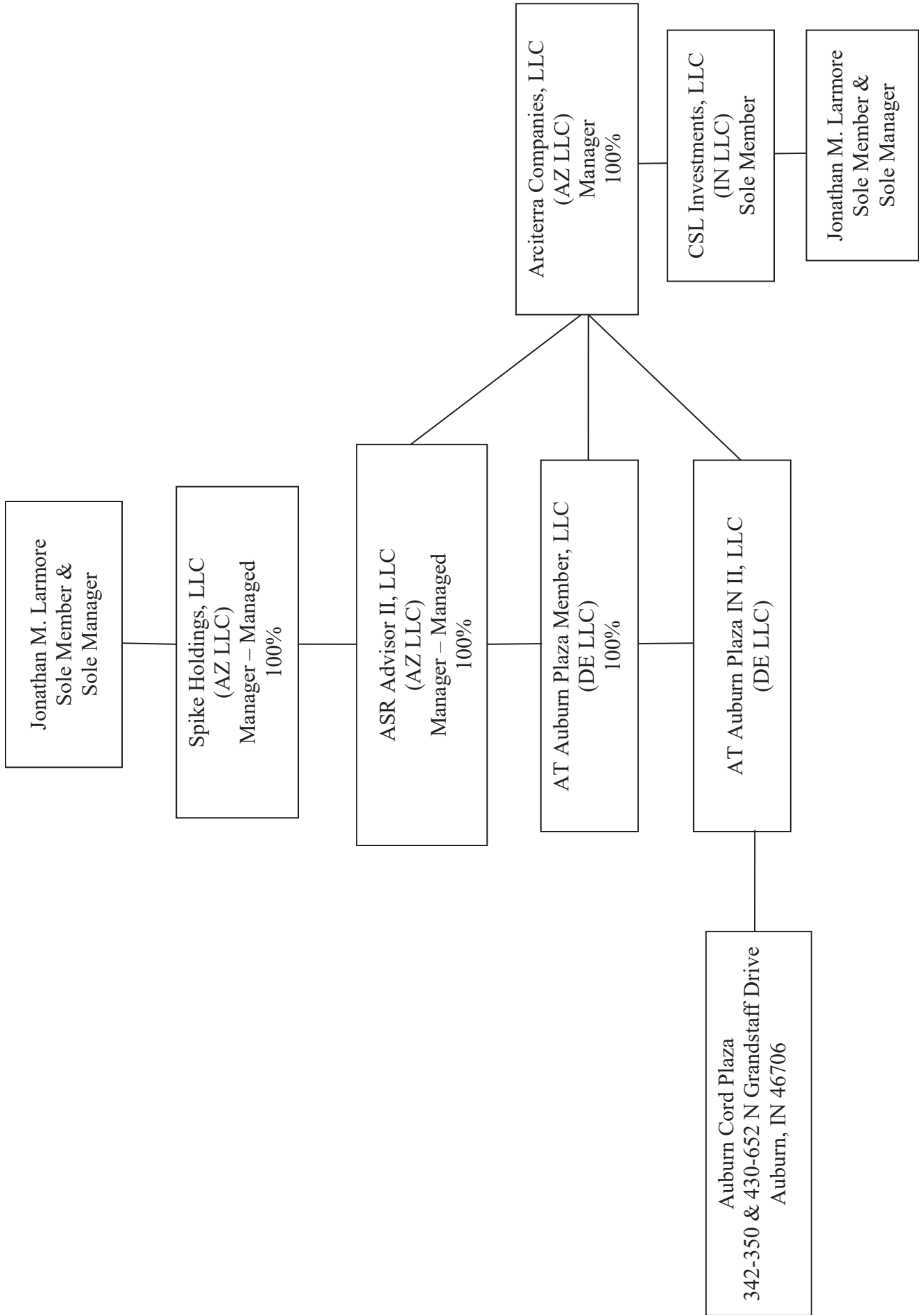
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SCHEDULE II

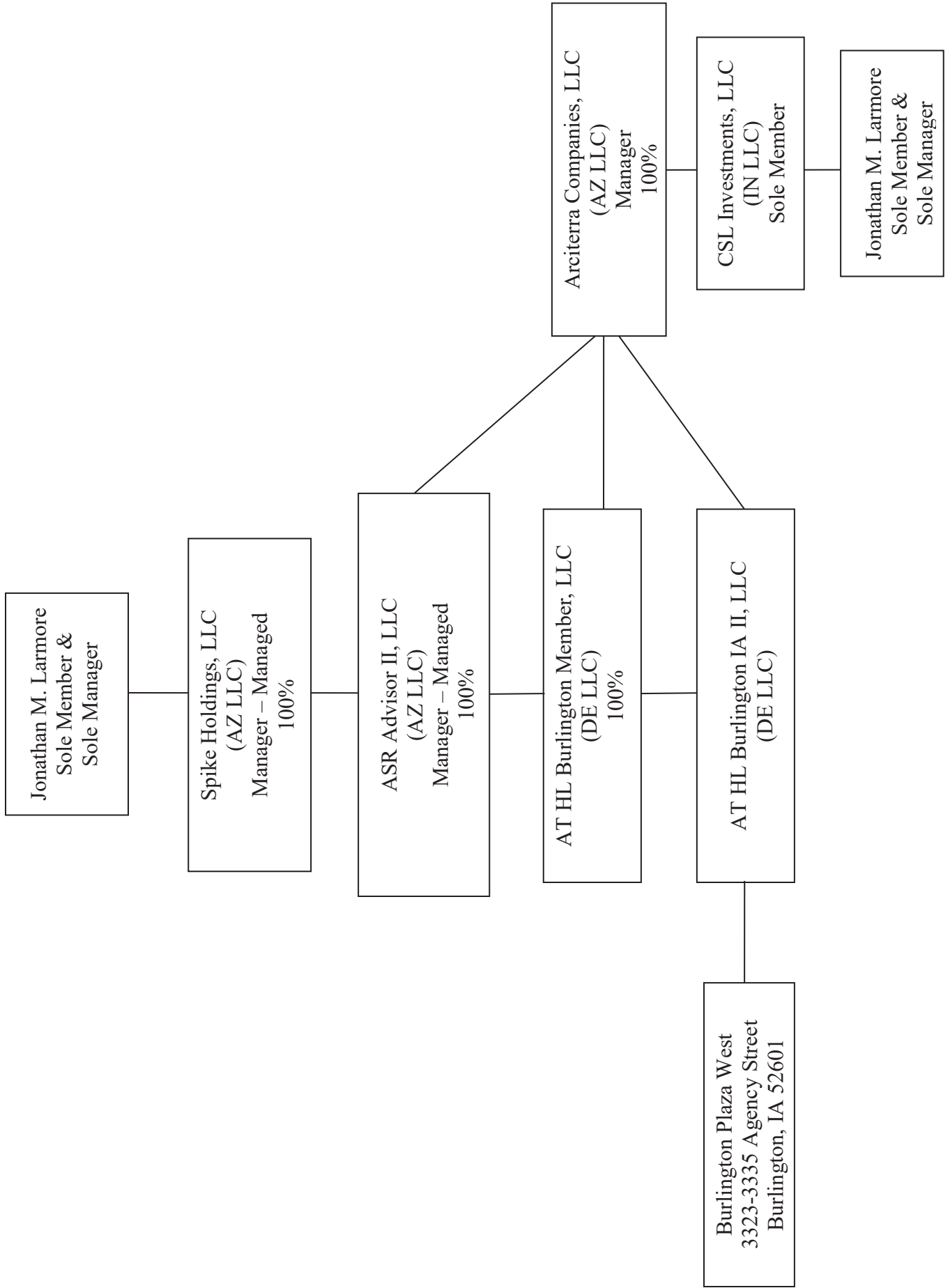
ORGANIZATIONAL CHARTS

(attached hereto)

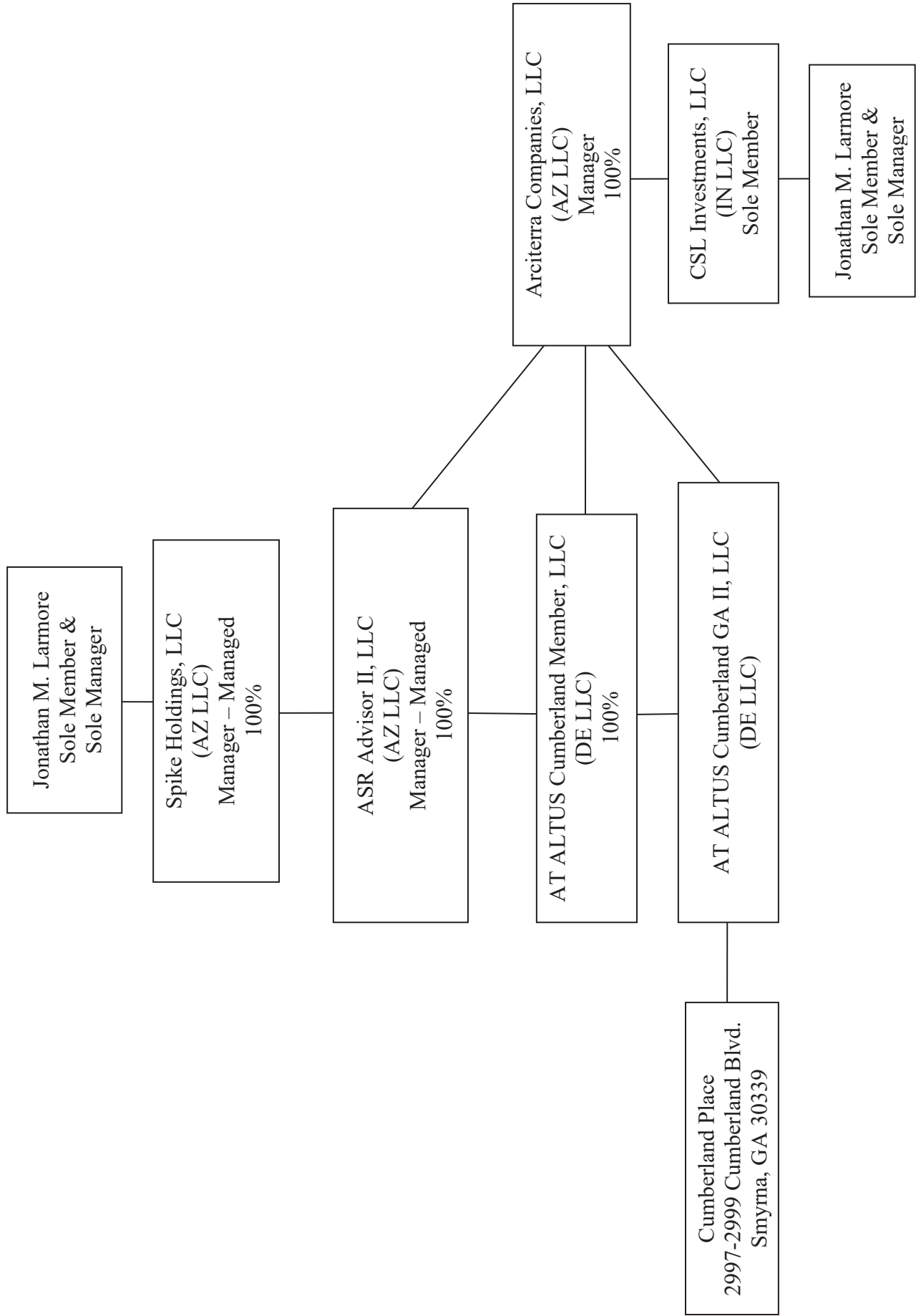
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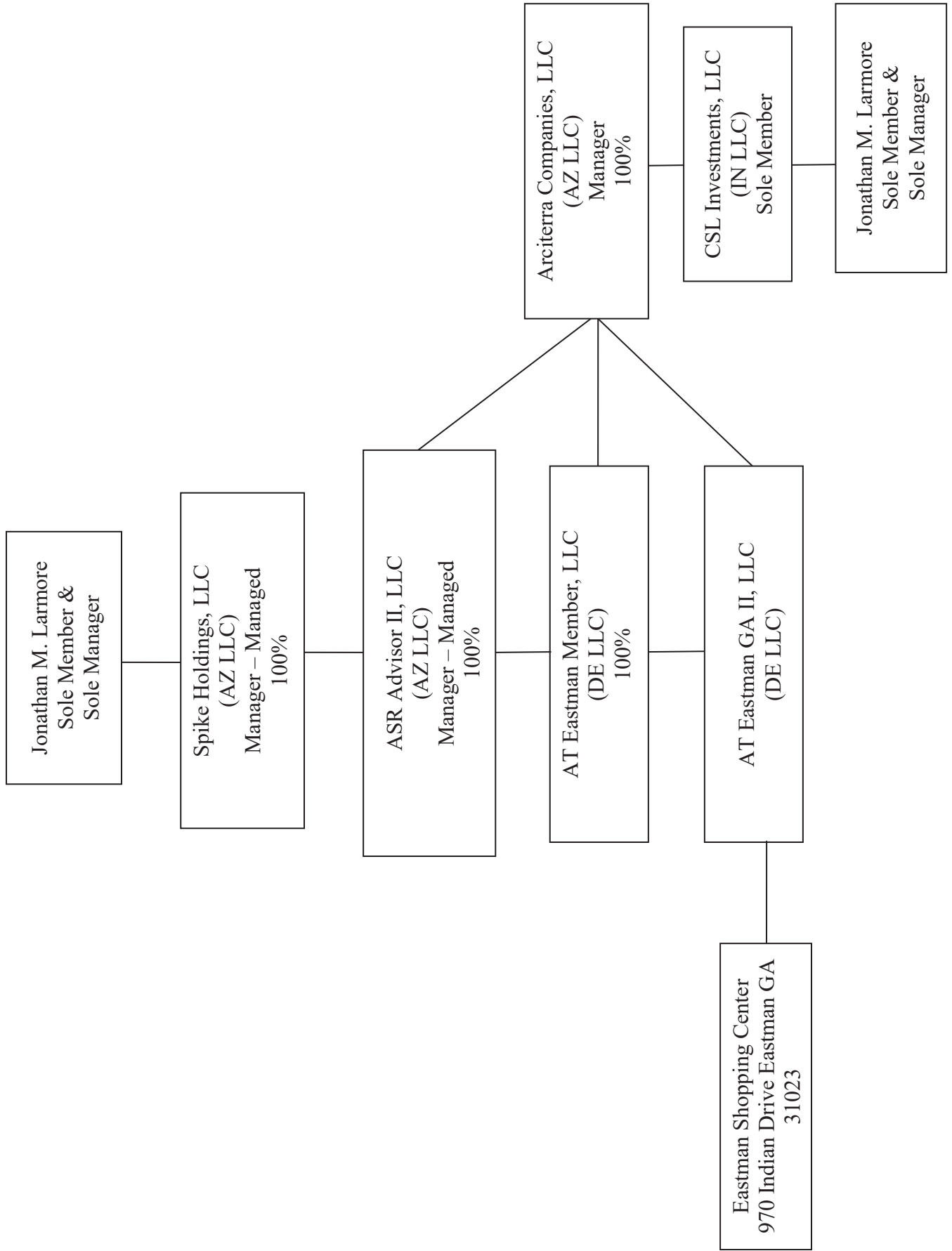
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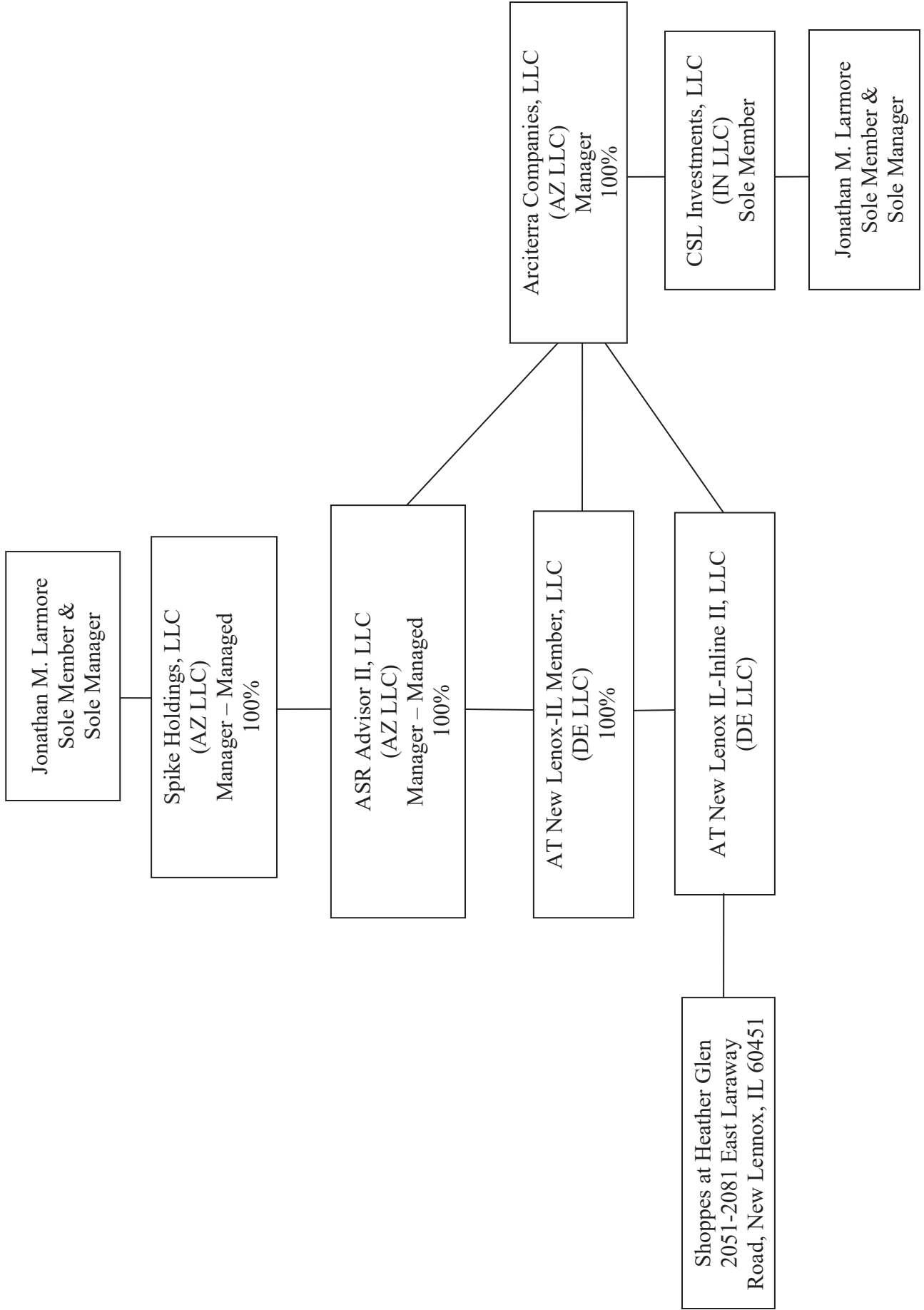
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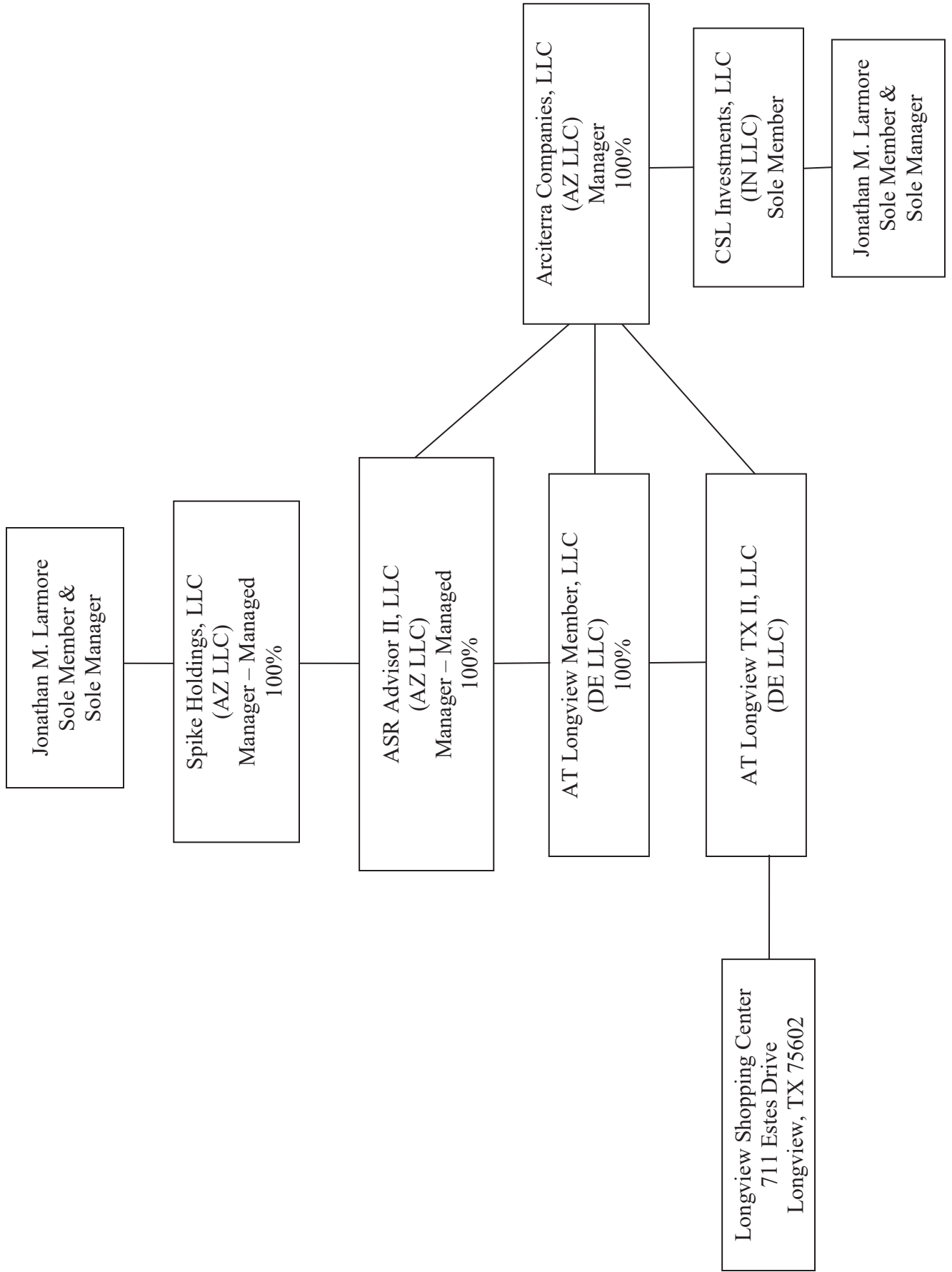
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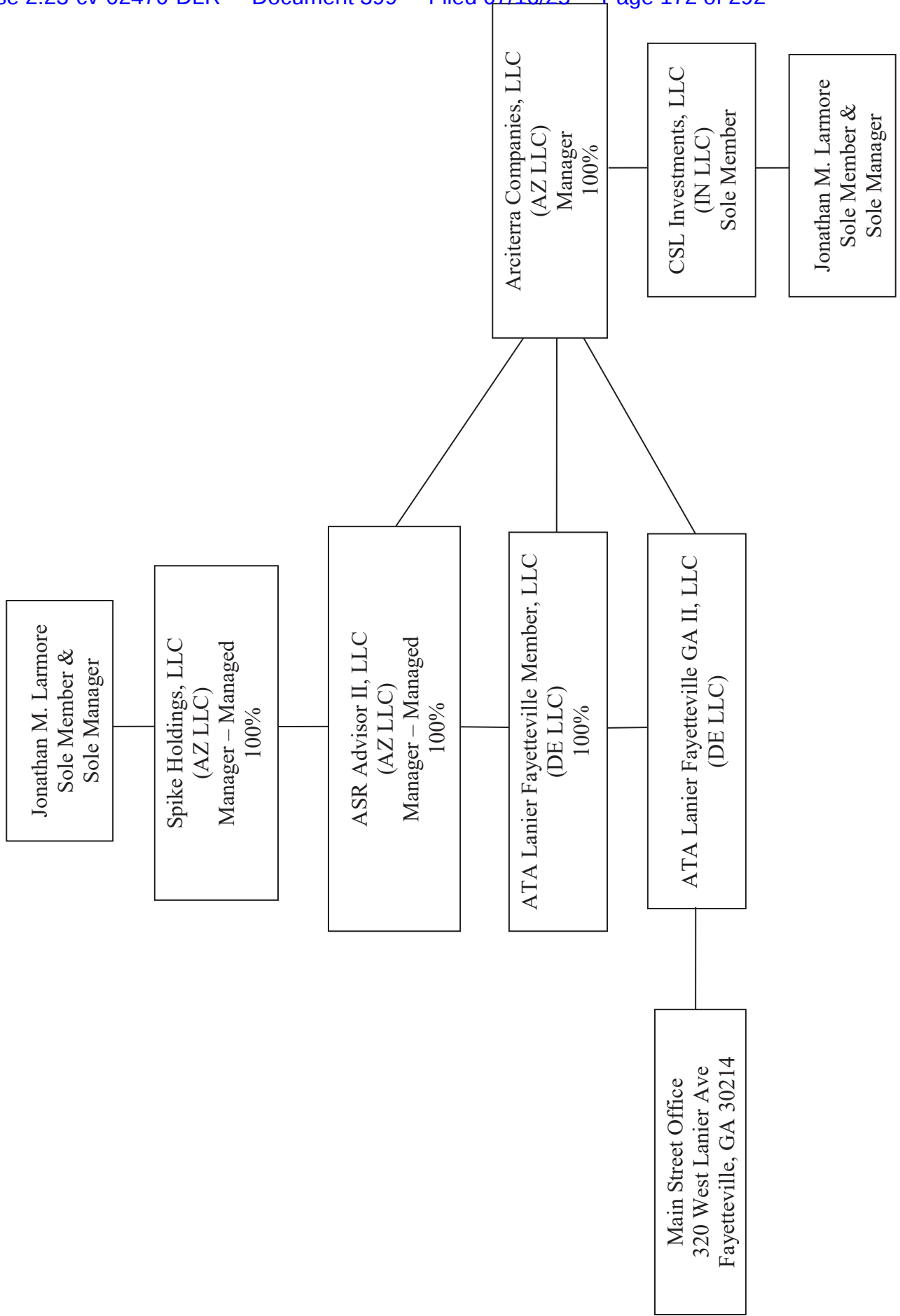
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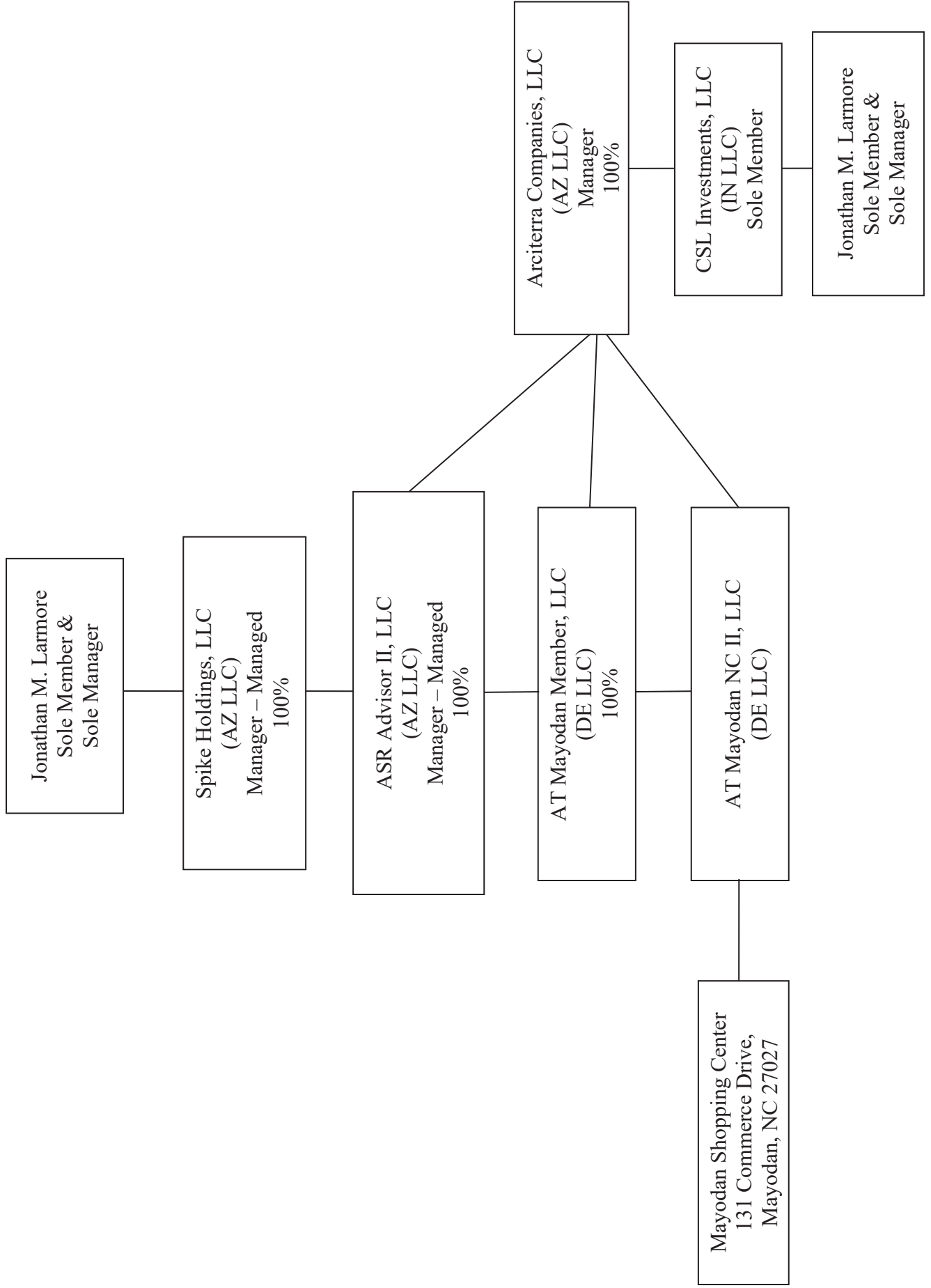
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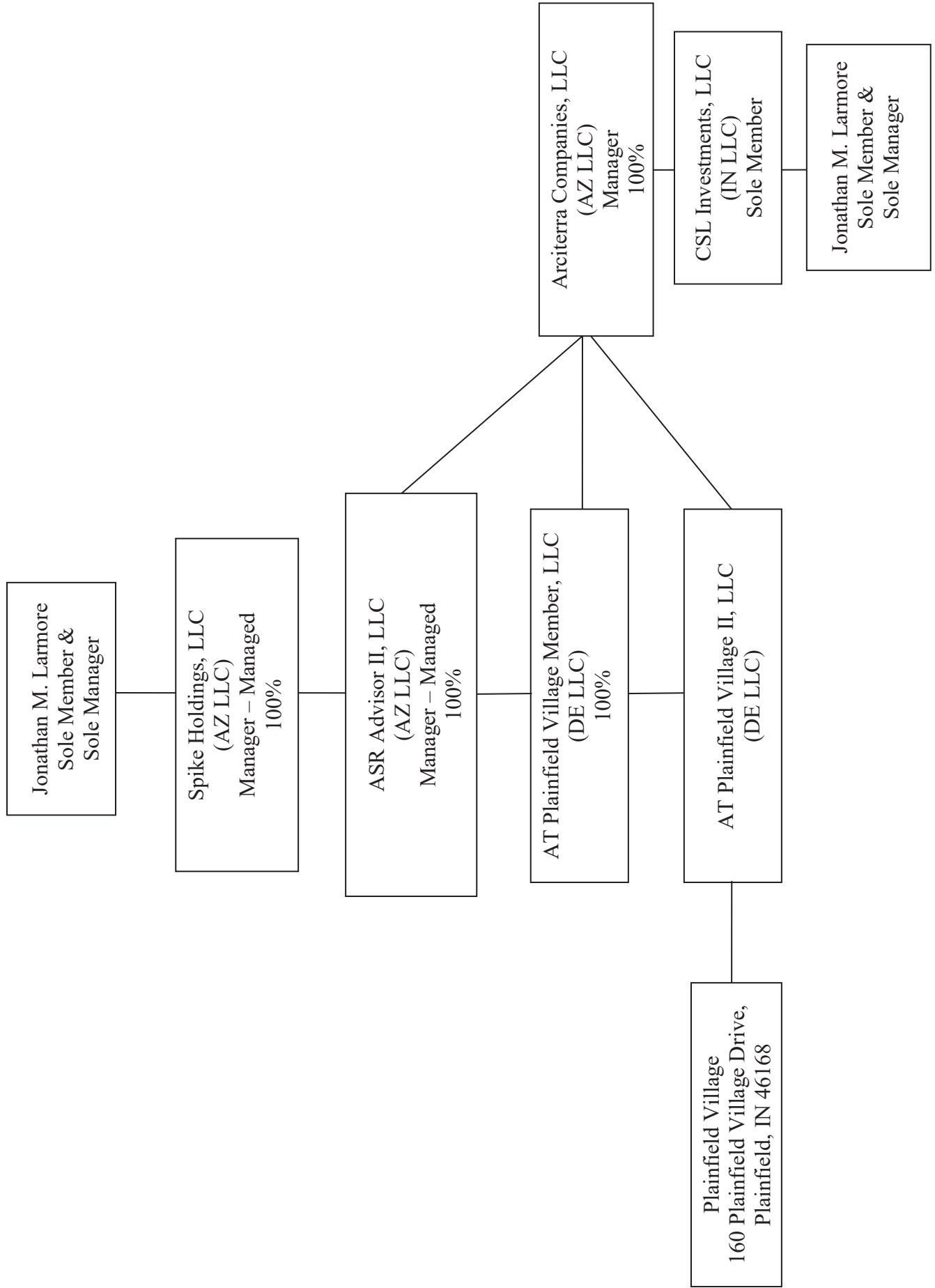
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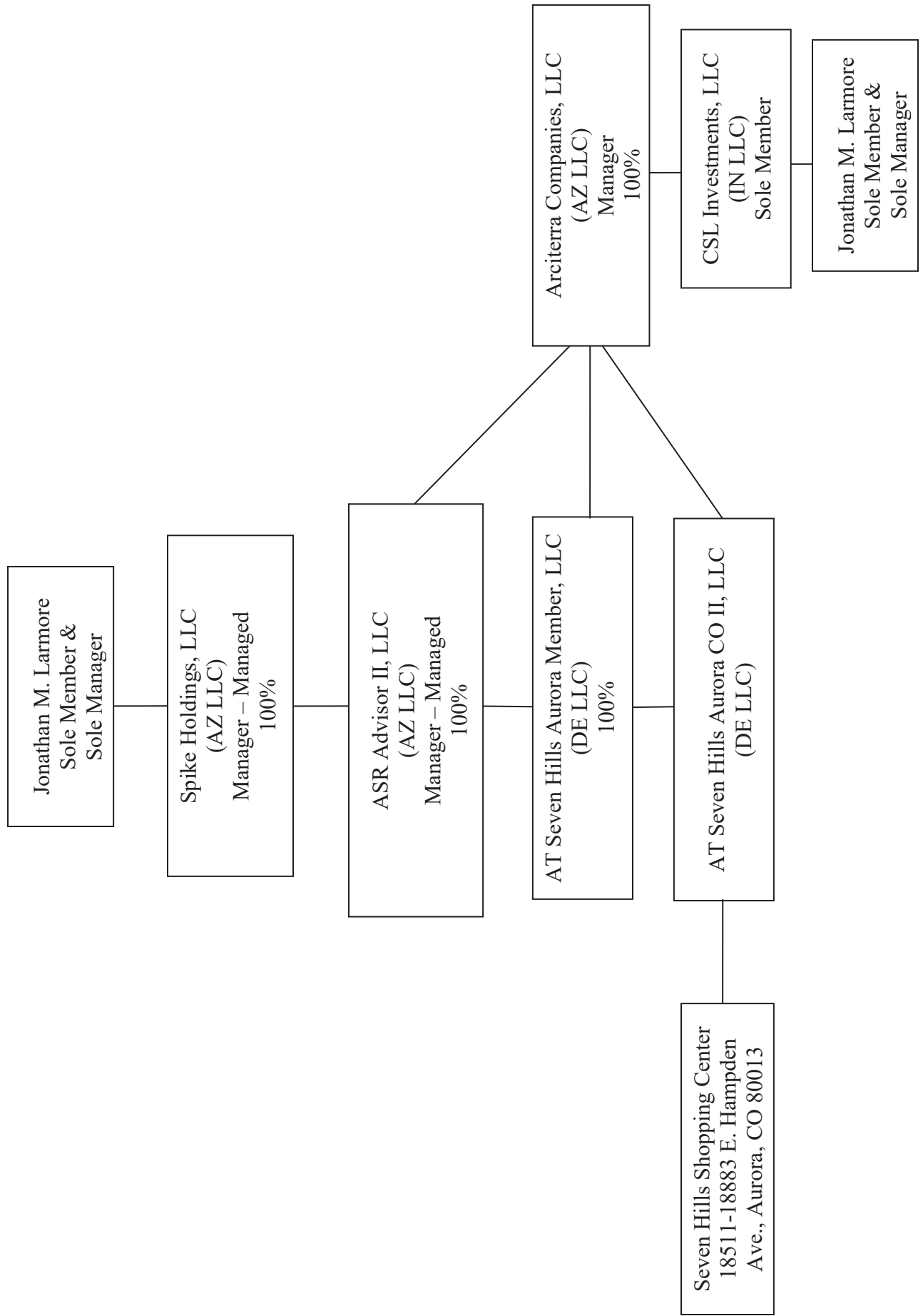
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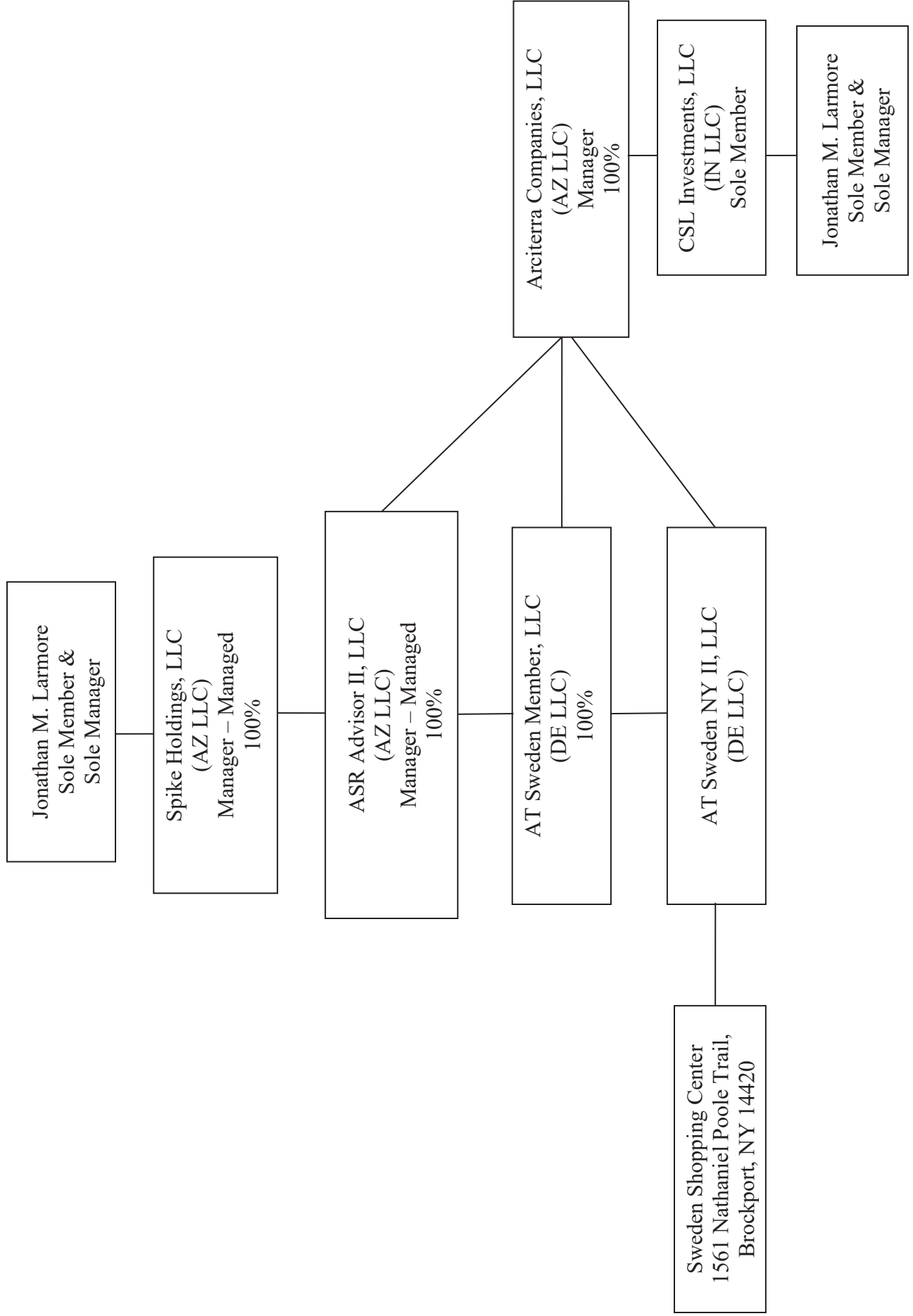
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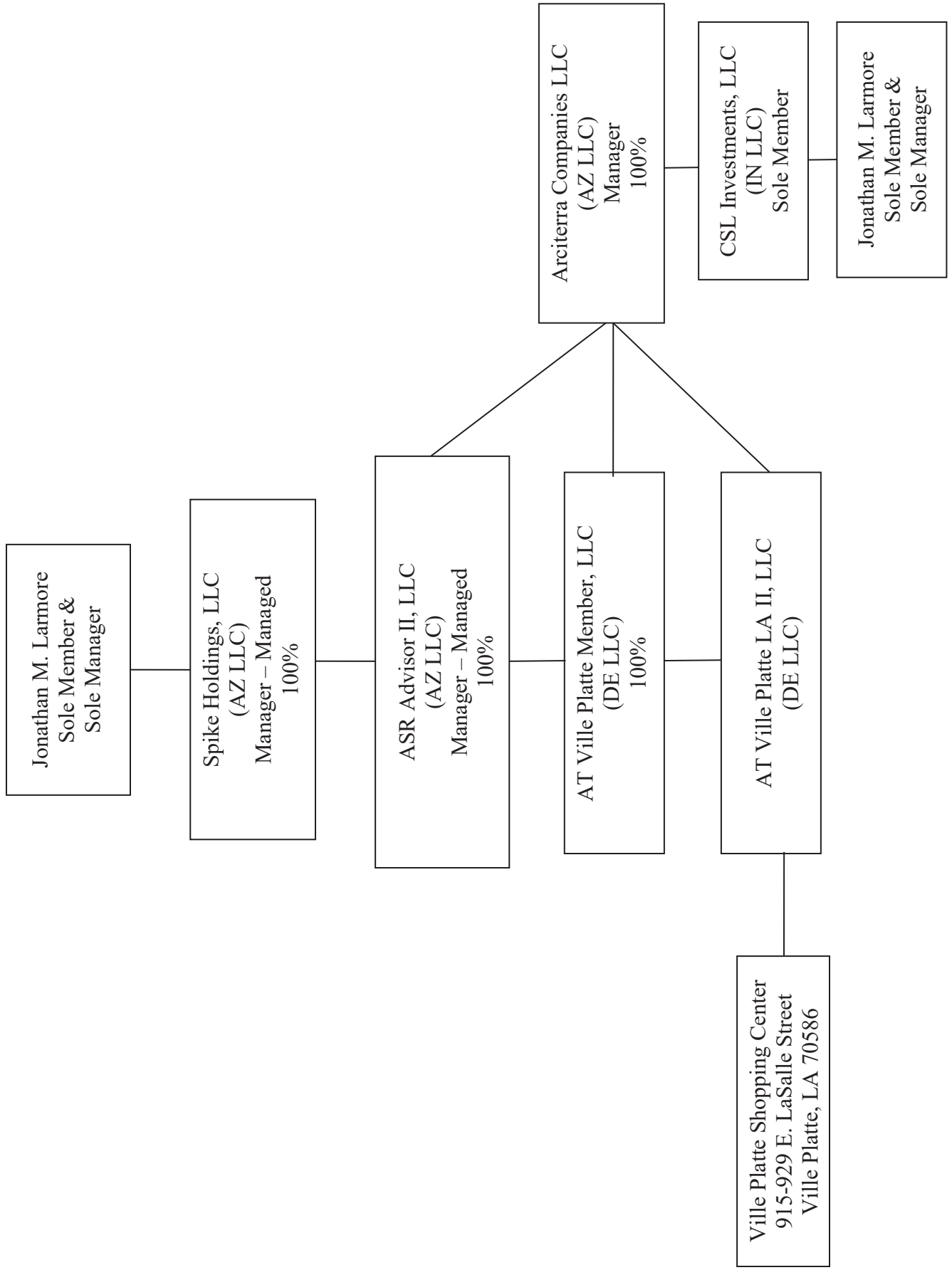
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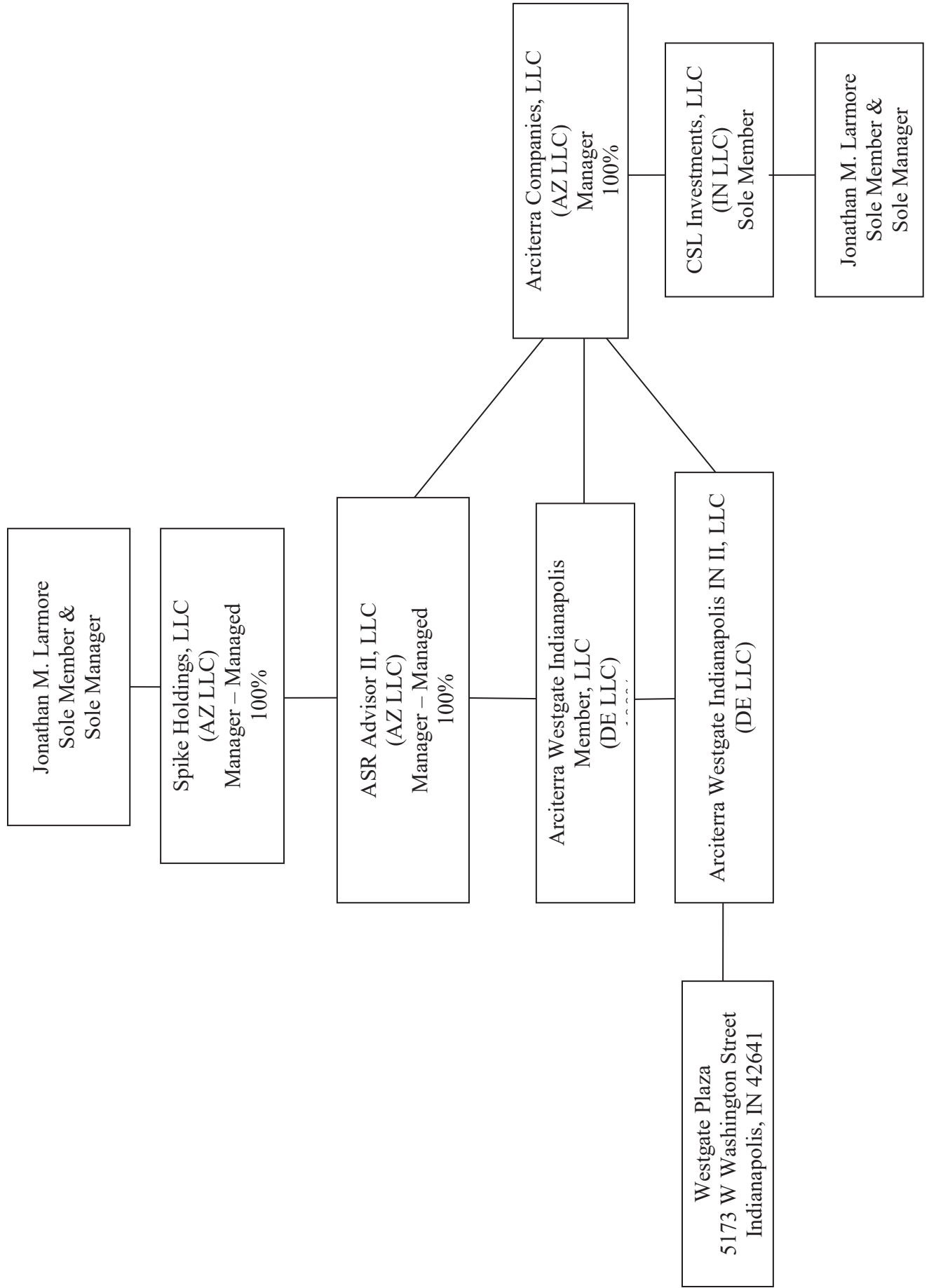
Sweden Shopping Center (NY)



Ville Platte Shopping Center (LA)



Westgate Plaza (IN)



SCHEDULE III

SCHEDULE OF BORROWERS

Each of the following is a Delaware limited liability company.

1. AT Seven Hills Aurora Member, LLC (the “**Seven Hills Borrower**”)
2. AT ALTUS Cumberland Member, LLC (the “**Cumberland Borrower**”)
3. AT Eastman Member, LLC (the “**Eastman Borrower**”)
4. ATA Lanier Fayetteville Member, LLC (the “**Main Street Borrower**”)
5. AT PT Danville Member, LLC (the “**Pine Tree Borrower**”)
6. AT New Lenox-IL Member, LLC (the “**Heather Glen Borrower**”)
7. AT Auburn Plaza Member, LLC (the “**Auburn Cord Borrower**”)
8. AT Plainfield Village Member, LLC (the “**Plainfield Village Borrower**”)
9. Arciterra Westgate Indianapolis Member, LLC (the “**Westgate Borrower**”)
10. AT HL Burlington Member, LLC (the “**Burlington Borrower**”)
11. AT Ville Platte Member, LLC (the “**Ville Platte Borrower**”)
12. AT Sweden Member, LLC (the “**Sweden Borrower**”)
13. AT Mayodan Member, LLC (the “**Mayodan Borrower**”)
14. AT Longview Member, LLC (the “**Longview Borrower**”)

SCHEDULE IV**LOCATION OF PROPERTIES AND ALLOCATED LOAN AMOUNTS**

Location of Property	Allocated Loan Amount
18511, 18581, 18757 and 18883 E. Hampden Avenue Aurora, Colorado 80013 (the “ Seven Hills Plaza Property ”)	\$3,775,000
2997 and 2999 Cumberland Blvd. Smyrna, Georgia 30339 (the “ Cumberland Place Property ”)	\$1,175,900
970 Indian Drive Eastman, Georgia 31023 (the “ Eastman Shopping Center Property ”)	\$118,000
320 West Lanier Avenue Fayetteville, Georgia 30214 (the “ Main Street Office Property ”)	\$818,700
22 West Newell Road Danville, Illinois 61834 (the “ Pine Tree Plaza Property ”)	\$280,000
2021 East Laraway Road New Lenox, Illinois 60451 (the “ Heather Glen Property ”)	\$320,700
506 N. Grandstaff Drive Auburn, Indiana 46706 (the “ Auburn Cord Plaza Property ”)	\$629,600
160 Plainfield Village Drive Plainfield, Indiana 46168 (the “ Plainfield Village Property ”)	\$591,000
5173 W. Washington Street Indianapolis, Indiana 046241 (the “ Westgate Plaza Property ”)	\$869,000
3351 Agency Street Burlington, Iowa 52601 (the “ Burlington Plaza West Property ”)	\$342,000

Location of Property	Allocated Loan Amount
925 E. LaSalle Street Ville Platte, Louisiana 70586 (the “ Ville Platte Shopping Center Property ”)	\$235,400
1561 Nathaniel Poole Trail Brockport, New York 14420 (the “ Sweden Shopping Center Property ”)	\$213,600
131 Commerce Drive Mayodan, North Carolina 27027 (the “ Mayodan Shopping Center Property ”)	\$429,700
711 Estes Drive Longview, Texas 75602 (the “ Longview Center Property ”)	\$201,400
Total	\$10,000,000

SCHEDULE V

SCHEDULE OF OWNERS

Each of the following is a Delaware limited liability company.

1. AT Seven Hills Aurora CO II, LLC (the “**Seven Hills Owner**”)
2. AT ALTUS Cumberland GA II, LLC (the “**Cumberland Owner**”)
3. AT Eastman GA II, LLC (the “**Eastman Owner**”)
4. ATA Lanier Fayetteville GA II, LLC (the “**Main Street Owner**”)
5. AT PT Danville IL II, LLC (the “**Pine Tree Owner**”)
6. AT New Lenox IL-Inline II, LLC (the “**Heather Glen Owner**”)
7. AT Auburn Plaza IN II, LLC (the “**Auburn Cord Owner**”)
8. AT Plainfield Village IN II, LLC (the “**Plainfield Village Owner**”)
9. Arciterra Westgate Indianapolis IN II, LLC (the “**Westgate Owner**”)
10. AT HL Burlington IA II, LLC (the “**Burlington Owner**”)
11. AT Ville Platte LA II, LLC (the “**Ville Platte Owner**”)
12. AT Sweden NY II, LLC (the “**Sweden Owner**”)
13. AT Mayodan NC II, LLC (the “**Mayodan Owner**”)
14. AT Longview TX II, LLC (the “**Longview Owner**”)

SCHEDULE VI
AMORTIZATION SCHEDULE

Period	Date	Accrual Days	Total Payment	Interest	Principal	Ending Balance
0	3/5/2020	24			-	10,000,000
1	4/5/2020	31	102,861	103,333	(472)	10,000,472
2	5/5/2020	30	102,861	100,005	2,857	9,997,616
3	6/5/2020	31	102,861	103,309	(447)	9,998,063
4	7/5/2020	30	102,861	99,981	2,881	9,995,182
5	8/5/2020	31	102,861	103,284	(422)	9,995,605
6	9/5/2020	31	102,861	103,288	(427)	9,996,031
7	10/5/2020	30	102,861	99,960	2,901	9,993,130
8	11/5/2020	31	102,861	103,262	(401)	9,993,531
9	12/5/2020	30	102,861	99,935	2,926	9,990,605
10	1/5/2021	31	102,861	103,236	(375)	9,990,980
11	2/5/2021	31	102,861	103,240	(379)	9,991,359
12	3/5/2021	28	102,861	93,253	9,609	9,981,751
13	4/5/2021	31	102,861	103,145	(283)	9,982,034
14	5/5/2021	30	102,861	99,820	3,041	9,978,993
15	6/5/2021	31	102,861	103,116	(255)	9,979,248
16	7/5/2021	30	102,861	99,792	3,069	9,976,180
17	8/5/2021	31	102,861	103,087	(226)	9,976,406
18	9/5/2021	31	102,861	103,090	(228)	9,976,634
19	10/5/2021	30	102,861	99,766	3,095	9,973,539
20	11/5/2021	31	102,861	103,060	(199)	9,973,737
21	12/5/2021	30	102,861	99,737	3,124	9,970,614
22	1/5/2022	31	102,861	103,030	(168)	9,970,782
23	2/5/2022	31	102,861	103,031	(170)	9,970,952
24	3/5/2022	28	102,861	93,062	9,799	9,961,153
25	4/5/2022	31	102,861	102,932	(71)	9,961,224
26	5/5/2022	30	102,861	99,612	3,249	9,957,975
27	6/5/2022	31	102,861	102,899	(38)	9,958,013
28	7/5/2022	30	102,861	99,580	3,281	9,954,731
29	8/5/2022	31	102,861	102,866	(4)	9,954,736
30	9/5/2022	31	102,861	102,866	(4)	9,954,740
31	10/5/2022	30	102,861	99,547	3,314	9,951,426
32	11/5/2022	31	102,861	102,831	30	9,951,396
33	12/5/2022	30	102,861	99,514	3,347	9,948,049
34	1/5/2023	31	102,861	102,797	65	9,947,984
35	2/5/2023	31	102,861	102,796	65	9,947,919
36	3/5/2023	28	102,861	92,847	10,014	9,937,905
37	4/5/2023	31	102,861	102,692	170	9,937,735
38	5/5/2023	30	102,861	99,377	3,484	9,934,251
39	6/5/2023	31	102,861	102,654	207	9,934,044
40	7/5/2023	30	102,861	99,340	3,521	9,930,523
41	8/5/2023	31	102,861	102,615	246	9,930,277
42	9/5/2023	31	102,861	102,613	248	9,930,029
43	10/5/2023	30	102,861	99,300	3,561	9,926,468
44	11/5/2023	31	102,861	102,574	288	9,926,180
45	12/5/2023	30	102,861	99,262	3,599	9,922,581
46	1/5/2024	31	102,861	102,533	328	9,922,253
47	2/5/2024	31	102,861	102,530	331	9,921,922
48	3/5/2024	29	102,861	95,912	6,949	9,914,972
49	4/5/2024	31	102,861	102,455	407	9,914,566
50	5/5/2024	30	102,861	99,146	3,716	9,910,850
51	6/5/2024	31	102,861	102,412	449	9,910,401
52	7/5/2024	30	102,861	99,104	3,757	9,906,644
53	8/5/2024	31	102,861	102,369	493	9,906,151
54	9/5/2024	31	102,861	102,364	498	9,905,653
55	10/5/2024	30	102,861	99,057	3,805	9,901,849
56	11/5/2024	31	102,861	102,319	542	9,901,307
57	12/5/2024	30	102,861	99,013	3,848	9,897,458
58	1/5/2025	31	102,861	102,274	588	9,896,871
59	2/5/2025	31	102,861	102,268	594	9,896,277
60	3/5/2025	28	102,861	92,365	10,496	9,885,781
61	4/5/2025	31	102,861	102,153	708	9,885,073
62	5/5/2025	30	102,861	98,851	4,011	9,881,062
63	6/5/2025	31	102,861	102,104	757	9,880,306
64	7/5/2025	30	102,861	98,803	4,058	9,876,247
65	8/5/2025	31	102,861	102,055	807	9,875,441

66	9/5/2025	31	102,861	102,046	815	9,874,626
67	10/5/2025	30	102,861	98,746	4,115	9,870,511
68	11/5/2025	31	102,861	101,995	866	9,869,645
69	12/5/2025	30	102,861	98,696	4,165	9,865,480
70	1/5/2026	31	102,861	101,943	918	9,864,562
71	2/5/2026	31	102,861	101,934	927	9,863,634
72	3/5/2026	28	102,861	92,061	10,801	9,852,834
73	4/5/2026	31	102,861	101,813	1,049	9,851,785
74	5/5/2026	30	102,861	98,518	4,343	9,847,442
75	6/5/2026	31	102,861	101,757	1,104	9,846,337
76	7/5/2026	30	102,861	98,463	4,398	9,841,939
77	8/5/2026	31	102,861	101,700	1,161	9,840,778
78	9/5/2026	31	102,861	101,688	1,173	9,839,605
79	10/5/2026	30	102,861	98,396	4,465	9,835,140
80	11/5/2026	31	102,861	101,630	1,231	9,833,908
81	12/5/2026	30	102,861	98,339	4,522	9,829,386
82	1/5/2027	31	102,861	101,570	1,291	9,828,095
83	2/5/2027	31	102,861	101,557	1,304	9,826,791
84	3/5/2027	28	102,861	91,717	11,145	9,815,646
85	4/5/2027	31	102,861	101,428	1,433	9,814,213
86	5/5/2027	30	102,861	98,142	4,719	9,809,494
87	6/5/2027	31	102,861	101,365	1,496	9,807,998
88	7/5/2027	30	102,861	98,080	4,781	9,803,217
89	8/5/2027	31	102,861	101,300	1,561	9,801,655
90	9/5/2027	31	102,861	101,284	1,577	9,800,078
91	10/5/2027	30	102,861	98,001	4,860	9,795,217
92	11/5/2027	31	102,861	101,217	1,644	9,793,573
93	12/5/2027	30	102,861	97,936	4,926	9,788,648
94	1/5/2028	31	102,861	101,149	1,712	9,786,936
95	2/5/2028	31	102,861	101,132	1,730	9,785,206
96	3/5/2028	29	102,861	94,590	8,271	9,776,935
97	4/5/2028	31	102,861	101,028	1,833	9,775,102
98	5/5/2028	30	102,861	97,751	5,110	9,769,992
99	6/5/2028	31	102,861	100,957	1,905	9,768,087
100	7/5/2028	30	102,861	97,681	5,180	9,762,907
101	8/5/2028	31	102,861	100,883	1,978	9,760,929
102	9/5/2028	31	102,861	100,863	1,998	9,758,931
103	10/5/2028	30	102,861	97,589	5,272	9,753,659
104	11/5/2028	31	102,861	100,788	2,073	9,751,585
105	12/5/2028	30	102,861	97,516	5,345	9,746,240
106	1/5/2029	31	102,861	100,711	2,150	9,744,090
107	2/5/2029	31	102,861	100,689	2,172	9,741,918
108	3/5/2029	28	102,861	90,925	11,937	9,729,981
109	4/5/2029	31	102,861	100,543	2,318	9,727,663
110	5/5/2029	30	102,861	97,277	5,585	9,722,078
111	6/5/2029	31	102,861	100,461	2,400	9,719,678
112	7/5/2029	30	102,861	97,197	5,664	9,714,014
113	8/5/2029	31	102,861	100,378	2,483	9,711,531
114	9/5/2029	31	102,861	100,352	2,509	9,709,022
115	10/5/2029	30	102,861	97,090	5,771	9,703,251
116	11/5/2029	31	102,861	100,267	2,594	9,700,657
117	12/5/2029	30	102,861	97,007	5,855	9,694,802
118	1/5/2030	31	102,861	100,180	2,682	9,692,120
119	2/5/2030	31	102,861	100,152	2,709	9,689,411
120	3/5/2030	28	9,779,845	90,435	9,689,411	-

Exhibit 3

PROMISSORY NOTE – MEZZANINE LOAN

\$10,000,000.00

New York, New York
February 10, 2020

FOR VALUE RECEIVED EACH OF THE ENTITIES SET FORTH ON **SCHEDULE I ATTACHED HERETO**, each a Delaware limited liability company, jointly and severally, as maker, each having its principal place of business at 2701 E. Camelback Road, Suite 150, Phoenix, Arizona 85016 (individually and/or collectively, as the context may require, “**Borrower**”), hereby unconditionally promises to pay to the order of **QUADRANT MEZZ FUND, LP**, a Delaware limited partnership, having an address at 8333 Douglas Avenue, Suite 1350, Dallas, Texas 75225 (together with its successors and/or assigns, “**Lender**”), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of \$10,000,000.00, or so much thereof as is advanced, in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note – Mezzanine Loan (this “**Note**”) at the Interest Rate, and to be paid in accordance with the terms of this Note and that certain Mezzanine Loan Agreement dated the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1

PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note from time to time outstanding at the rates and at the times specified in Article II of the Loan Agreement and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.

ARTICLE 2

DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender if any payment required in this Note is not paid on or prior to the date when due or if not paid on the Maturity Date or on the happening of any other Event of Default.

ARTICLE 3

LOAN DOCUMENTS

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency

between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

ARTICLE 4

SAVINGS CLAUSE

Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

ARTICLE 5

NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 6

WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower or any other Person who may become liable for the payment of all or any part of the Debt under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership or limited liability company, the agreements herein shall remain in force and be applicable, notwithstanding any changes in the individuals comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor

partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower," as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing in the foregoing sentence shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, which may be set forth in the Loan Agreement, the Security Instrument or any other Loan Document.

ARTICLE 7

TRANSFER

Upon the transfer of this Note, Borrower hereby waiving notice of any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8

EXCULPATION

The provisions of Article XIII of the Loan Agreement are hereby incorporated by reference into this Note to the same extent and with the same force as if fully set forth herein.

ARTICLE 9

GOVERNING LAW

(A) THIS NOTE WAS NEGOTIATED IN THE STATE OF NEW YORK AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS NOTE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS NOTE

AND THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS NOTE MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, AT THE ADDRESS SPECIFIED IN SECTION 14.1 OF THE LOAN AGREEMENT, AND AGREES THAT SUCH SERVICE AT SUCH ADDRESS IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER ITSELF IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

ARTICLE 10

NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Article XIV of the Loan Agreement.

ARTICLE 11

JOINT AND SEVERAL LIABILITY

If Borrower consists of more than one Person, the obligation and liabilities of each such Person under this Note shall be joint and several.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

BORROWER:

AT SEVEN HILLS AURORA MEMBER, LLC,
AT ALTUS CUMBERLAND MEMBER, LLC,
AT EASTMAN MEMBER, LLC,
ATA LANIER FAYETTEVILLE MEMBER, LLC,
AT PT DENVILLE MEMBER, LLC,
AT NEW LENOX-IL MEMBER, LLC,
AT AUBURN PLAZA MEMBER, LLC,
AT PLAINFIELD VILLAGE MEMBER, LLC,
ARCITERRA WESTGATE INDIANAPOLIS
MEMBER, LLC,
AT HL BURLINGTON MEMBER, LLC,
AT VILLE PLATTE MEMBER, LLC,
AT SWEDEN MEMBER, LLC,
AT MAYODAN MEMBER, LLC,
AT LONGVIEW MEMBER, LLC,
each a Delaware limited liability company

By: Arciterra Companies, LLC,
an Arizona limited liability company,
its manager

By:



Name: Blaine P. Rice

Title: Vice President

SCHEDULE I

List of Borrowers

1. AT Seven Hills Aurora Member, LLC
2. AT ALTUS Cumberland Member, LLC
3. AT Eastman Member, LLC
4. ATA Lanier Fayetteville Member, LLC
5. AT PT Danville Member, LLC
6. AT New Lenox-IL Member, LLC
7. AT Auburn Plaza Member, LLC
8. AT Plainfield Village Member, LLC
9. Arciterra Westgate Indianapolis Member, LLC
10. AT HL Burlington Member, LLC
11. AT Ville Platte Member, LLC
12. AT Sweden Member, LLC
13. AT Mayodan Member, LLC
14. AT Longview Member, LLC

Exhibit 4

MEZZANINE PLEDGE AND SECURITY AGREEMENT

THIS MEZZANINE PLEDGE AND SECURITY AGREEMENT (as amended, restated, modified and supplemented and in effect, from time to time, this “**Agreement**”), dated as of February 10, 2020 is made by each of the pledgor entities listed on Schedule I attached hereto, each having an address at 2701 E. Camelback Road, Suite 150, Phoenix, Arizona 85016 (individually and/or collectively, as the context requires, “**Pledgor**”) in favor of **QUADRANT MEZZ FUND, LP**, a Delaware limited partnership, having an address at 8333 Douglas Avenue, Suite 1350, Dallas, Texas 75225 (together with its successors and/or assigns, “**Lender**”).

R E C I T A L S:

A. Pursuant to that certain Mezzanine Loan Agreement, dated on or about the date hereof, among Pledgor, as borrower, and Lender, as lender (as same may hereafter be amended, restated, replaced, supplemented or otherwise modified, the “**Loan Agreement**”), Lender agreed to make a loan in the maximum principal amount of \$10,000,000 (the “**Loan**”) to Pledgor. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Loan Agreement.

B. To secure Pledgor’s obligations under the Loan Documents, Lender has required Pledgor to, among other things, pledge, and by this Agreement Pledgor does pledge, to Lender all of Pledgor’s right, title and interest in, to and under the Collateral (as defined below).

NOW, THEREFORE, in consideration of the foregoing and in order to induce Lender to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor hereby agrees for the benefit of Lender as follows:

ARTICLE I - GRANT OF SECURITY INTEREST; COLLATERAL

Section 1.1. Collateral. As security for (i) the full and punctual payment of the Loan together with all interest payable in respect thereto and all other sums payable or that may become due and payable, to Lender under the Loan Agreement and/or under this Agreement and/or under any other Loan Document (collectively, the “**Debt**”), whether such Debt or any portion thereof becomes due periodically, at stated maturity, by prepayment, declaration, acceleration, demand or otherwise (including, without limitation, the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), whether allowed or allowable as claims), and (ii) the performance of Pledgor’s other obligations under the Loan Agreement, this Agreement and the other Loan Documents (the obligations described in clauses (i) and (ii) of this Section 1.1 are herein, collectively, the “**Secured Obligations**”), each Pledgor hereby grants, pledges, hypothecates, transfers and assigns to Lender a first priority and continuing lien on, and first priority security interest, in, and, in furtherance of such grant, pledge, hypothecation, transfer and assignment, hereby transfers and assigns to Lender as collateral security, all of such Pledgor’s right, title, ownership, equity and other interests in and to the following, whether now owned or hereafter acquired, now existing or hereafter arising and wherever located (collectively, the “**Collateral**”):

(a) one hundred percent (100%) of the limited liability company membership interests (whether now existing or hereafter acquired, the “**Pledged Equity**”) owned by such

Pledgor in and to each related property owner entity listed adjacent to such Pledgor on Schedule I attached hereto (individually and/or collectively, as the context requires, the “**Property Owner**”);

(b) intentionally omitted;

(c) all rights, privileges, general intangibles, payments intangibles, management rights, consent rights, voting rights, authority and power arising from Pledgor’s interest in the Pledged Equity;

(d) the capital of Pledgor and any and all profits, losses, Distributions (as defined below), and allocations attributable to the Pledged Equity as well as the proceeds of any Distribution thereof, whether arising under the terms of any Organizational Agreement (as defined below) of the Property Owner or otherwise;

(e) all other payments, if any, due or to become due, to Pledgor and all other present and future claims by Pledgor against the Property Owner, or in respect of the Pledged Equity, under or arising out of (i) any Organizational Agreement of the Property Owner, (ii) monies loaned or advanced, for services rendered or otherwise, (iii) any other contractual obligations, commercial tort claims, supporting obligations, damages, insurance proceeds, condemnation awards or other amounts due or to become due to Pledgor from the Property Owner or with respect to the Pledged Equity;

(f) Pledgor’s claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the ownership of the Pledged Equity;

(g) each Pledgor’s rights in the applicable Property Owner pursuant to any Organizational Agreement of the Property Owner, or at law, to exercise and enforce every right, power, remedy, authority, option and privilege of Pledgor relating to the Pledged Equity, including, without limitation, the right to (i) execute any instruments and to take any and all other actions on behalf of and in the name of Pledgor in respect of the Pledged Equity, (ii) exercise any and all voting, consent, management and similar rights of Pledgor in or with respect to the Property Owner, (iii) exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, amendment, waiver or approval with respect to the Property Owner, (iv) enforce or execute any checks, or other instruments or orders of the Property Owner, and (v) file any claims and to take any action in connection with any of the foregoing, together with full power and authority to demand, receive, enforce and collect any of the foregoing or any property of the Property Owner;

(h) all Investment Property (as such term is defined in Section 9-102 of the UCC (as defined below), issued by or relating to the Property Owner, or otherwise relating to the Pledged Equity;

(i) all other ownership and similar interests (“**Equity Interests**”) and other property, securities, and assets now existing or hereafter acquired by Pledgor relating to the Property Owner, including, without limitation, as a result of any consolidation, combinations, mergers, reorganizations, acquisitions, exchange offers, recapitalizations of any type, contributions to capital, splits, spin-offs, or similar actions or the exercise of options or other rights relating to the Pledged Equity;

(j) to the extent not otherwise included above in this Section 1.1, all assets and personal property of Pledgor, including, without limitation, all of Pledgor's accounts, equipment, fixtures, inventory, goods, accessions, software, general intangibles, payment intangibles, deposit accounts, documents, instruments, money, chattel paper (whether electronic or intangible), investment property, letters of credit, letters of credit rights, supporting obligations, commercial tort claims, oil, gas and mineral rights (whether before extraction or as extracted collateral);

(k) all other claims which each Pledgor now has or may in the future acquire in its capacity as a member of the applicable Property Owner against such Property Owner and its property;

(l) all partnership certificates, member certificates, stock certificates, or any other instrument, note, chattel paper or certificate (including, without limitation, all "certificated securities" within the meaning of Section 8-102 of the UCC) (whether or not qualifying as Investment Property) representing or evidencing the Pledged Equity and any interest of Pledgor in the entries on the books of any financial intermediary pertaining to such certificates or other documents or instruments, and all options and warrants for the purchase of any Equity Interests now or hereafter held in the name of, or acquired by, Pledgor (collectively, "**Certificated Securities**"), and all Certificated Securities in the Property Owner from time to time acquired by Pledgor in any manner, and any interest of Pledgor in the entries on the books of any financial intermediary pertaining to such Certificated Securities, and all securities convertible into and options, warrants, dividends, cash, instruments and other rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Certificated Securities (including, without limitation, all rights to request or cause the issuer thereof to register any or all of the Collateral under federal and state securities laws to the maximum extent possible under any agreement for such registration rights), and all put rights, tag-along rights and other rights pertaining to the sale or other transfer of such Collateral, together, in each case, with all rights under any Organizational Agreement of the Property Owner pertaining to such rights; and

(m) (i) all "proceeds" (as such term is defined in Section 9-102 of the UCC) of any or all of the foregoing (whether cash or non-cash proceeds, including, without limitation, insurance proceeds), (ii) whatever is receivable or received when any of the Collateral is sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes, without limitation, all rights to payment, including return premiums, with respect to any insurance relating thereto and also includes all interest, dividends and other property receivable or received on account of any of the Collateral or proceeds thereof, and in any event, shall include all Distributions or other income from any of the Collateral, all collections thereon or all Distributions with respect thereto, and (iii) all proceeds, products, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the Collateral. The inclusion of proceeds in the Collateral does not authorize Pledgor to sell, dispose of or otherwise use the Collateral in any manner not specifically permitted by the Loan Documents.

Section 1.2. Definitions. As used herein, the following terms shall have the following respective meanings:

(a) "**Distributions**" means all dividends, distributions, liquidation proceeds, cash, profits, instruments and other property and payments or economic benefits or interests to

which Pledgor is entitled, or may become entitled to, with respect to the Pledged Equity whether or not received by or otherwise distributed to Pledgor, whether such dividends, distributions, liquidation proceeds, cash, profits, instruments and other property and economic benefits are paid or distributed by the Property Owner in respect of operating profits, sales, exchanges, refinancing, condemnations or insured losses of the Property Owner's assets, the liquidation of the Property Owner's assets and affairs, management fees, guaranteed payments, repayment of loans, reimbursement of expenses or otherwise in respect of or in exchange for any or all of the Pledged Equity.

(b) **“Organizational Documents”** means, as to any Person, collectively, as applicable, the partnership agreement, the limited liability company operating agreement, and the articles or certificate of organization, by-laws, certificate of formation and other organizational and governing documents, in each case, of the applicable Person.

(c) **“UCC”** means the Uniform Commercial Code, as in effect from time to time in the applicable state.

Section 1.3. **Perfection of Security Interest.** On or before the date hereof (the **“Closing Date”**), Pledgor shall:

(a) deliver to Lender Certificated Securities (substantially in the form attached hereto as **Exhibit A**) representing all of the Pledged Equity duly endorsed or subscribed in blank, or accompanied by stock powers or other appropriate instruments of transfer endorsed in blank by Pledgor and enter into such other arrangements as Lender deems necessary or advisable to give control of any Investment Property to Lender within the meaning of Section 8-106 of the UCC, all of which shall be in form and content acceptable to Lender;

(b) in addition to the provisions of Section 1.3(a) above, deliver to Lender an assignment of membership interest (the **“Assignment of Interest”**), substantially in the form attached hereto as **Exhibit B**, transferring all of the Pledged Equity in blank, duly executed by Pledgor and undated;

(c) cause the Property Owner to execute and deliver the Property Owner Acknowledgment substantially in the form attached hereto as **Exhibit C**; and

(d) promptly take all other actions required or deemed advisable by Lender to perfect the security interest of Lender in the Collateral under applicable law, including, without limitation, filing UCC financing statements in favor of Lender relating to the Collateral.

It is the intention of Pledgor and Lender that at all times while any portion of the Debt remains unpaid, the Pledged Equity shall constitute Investment Property, and, to that end, Pledgor shall take, and shall cause the Property Owner to take, all necessary action to obtain such classification pursuant to the UCC.

ARTICLE II - POWERS OF PLEDGOR PRIOR TO AN EVENT OF DEFAULT

Section 2.1. **Distributions; Exercise of Pledgor's Rights.** Unless an Event of Default has occurred that is continuing, and subject to the terms of this Agreement and the other Loan

Documents, Pledgor shall be conditionally entitled to (a) receive and to retain cash Distributions allocable to the Collateral, and (b) exercise (but only in a manner that will not (i) violate or be inconsistent with the terms hereof or of any other Loan Document or (ii) have the effect of impairing the position or interests of Lender) the voting, consent, administration, management and all other powers, rights and remedies of Pledgor with respect to the Collateral under the Organizational Documents of the Property Owner (including all other rights and powers thereunder which are pledged hereunder or otherwise). If Pledgor shall become entitled to receive or shall receive from the Property Owner (A) any non-cash Distribution as an addition to, on account of, in substitution of, or in exchange for the Collateral or any part thereof, or (B) during the continuance of any Event of Default, any cash Distributions, then in each case, the same shall immediately be remitted to Lender (in the exact form received, with Pledgor's endorsement or assignment or other instrument as Lender may deem appropriate) to be held as additional Collateral for the Secured Obligations or for application thereto, as applicable, and until so remitted, shall be received and held by Pledgor in trust for, and as agent for, Lender.

Section 2.2. Termination of Pledgor's Rights. Upon the occurrence and during the continuance of an Event of Default, all powers, rights and remedies of Pledgor, which are conditionally permitted pursuant to Section 2.1 hereof, shall cease and the provisions of Article 4 hereof shall apply.

ARTICLE III - REPRESENTATIONS, WARRANTIES AND COVENANTS OF PLEDGOR

Until payment and performance in full of the Secured Obligations, Pledgor hereby covenants for Lender's benefit, and represents and warrants to Lender as follows:

Section 3.1. Percentage Ownership. The Pledged Equity constitutes, and shall at times in the future constitute, one hundred percent (100%) of the issued and outstanding membership and ownership interests in the Property Owner. Each Pledgor owns, and shall at all times in the future own, one hundred percent (100%) of the respective Pledged Equity. Pledgor does not have outstanding any options or similar rights or other agreements to acquire or sell or otherwise transfer all or any portion of any Pledged Equity.

Section 3.2. Title to Collateral. Pledgor validly acquired, and is the sole legal and beneficial owner, of the Collateral free and clear of all liens, charges, options and other encumbrances of any kind whatsoever, except such liens as are created pursuant to this Agreement and/or the other Loan Documents. Pledgor will have like title in, and the right to pledge, any other property at any time hereafter acquired by Pledgor and pledged to Lender as Collateral hereunder.

Section 3.3. Defense of Title. Pledgor will, at its sole cost and expense, (i) defend Lender's right, title and interest in and to the Collateral against the claims and demands of all third Persons and (ii) take all actions as from time to time may be necessary or appropriate to preserve the lien (and the first priority thereof) on the Collateral created pursuant to this Agreement.

Section 3.4. No Transfer of Collateral. Except for the Transfer effected by this Agreement and any Transfer expressly permitted by the Loan Agreement, Pledgor shall not Transfer the Collateral, or any portion thereof, or suffer or permit any Transfer thereof to occur.

Any purported Transfer made in violation of this Section 3.4 shall (i) be void and of no force and effect and (ii) constitute an immediate Event of Default without notice or opportunity to cure.

Section 3.5. Perfected Security Interest. Giving effect to this Agreement, Lender has, with respect to all Collateral owned by Pledgor on the Closing Date, and will have with respect to any other property at any time hereafter acquired by Pledgor and pledged to Lender as Collateral hereunder, a valid, perfected and continuing first lien upon, and security interest in, the Collateral and no other Person has any interest or right therein or claim with respect thereto.

Section 3.6. No Financing Statements. Except for financing statements filed or to be filed in favor of Lender as secured party, or such other financing statements expressly permitted with Lender's prior written consent, which may be withheld in Lender's sole discretion, there are not now, and will not in the future be, and Pledgor will not permit to be filed, any financing statements under the UCC covering any or all of the Collateral, and no such financing statements are, or will be, filed in any public office.

Section 3.7. Certificated Securities. All of the Pledged Equity is evidenced and represented by Certificated Securities and such certificated securities have been duly and validly issued in the name of Pledgor. Pledgor has delivered to Lender all Certificated Securities constituting the Pledged Equity, duly indorsed in blank within the meaning of the UCC and otherwise in compliance with the terms of Section 1.3 hereof. The Certificated Securities have been in the physical possession of Pledgor at all times prior to such delivery to Lender. There are no Certificated Securities evidencing any Equity Interest in the Property Owner other than those evidencing the Pledged Equity. Pledgor covenants and agrees that it shall not permit the Property Owner to convert existing Equity Interests, or issue new Equity Interests. Notwithstanding the foregoing, Pledgor shall promptly notify Lender if any Equity Interest with respect to the Property Owner (whether now owned or hereafter acquired by Pledgor) is not evidenced by a Certificated Security, and Pledgor shall promptly thereafter take all actions required to perfect the security interest of Lender in such Pledged Equity under applicable law and otherwise take all actions required under Section 1.3 hereof in respect thereto.

Section 3.8. Valid Issuance, Fully Paid and Non-Assessable, Etc. The Pledged Equity has been duly authorized and validly created and issued and is fully paid and non-assessable. Pledgor is not, and will not become, a party to or otherwise be or become bound by any agreement, other than this Agreement and the other Loan Documents, which restricts in any manner the rights of any present or future holder of any of the Pledged Equity with respect thereto. There are no setoffs, counterclaims or defenses with respect to the Collateral owned by Pledgor and no agreement, oral or written, has been made with any other Person under which any deduction or discount may be claimed with respect to such Collateral and there is no fact or circumstance which would prohibit or prevent Pledgor from assigning to Lender, and granting to Lender a security interest in, the Collateral.

Section 3.9. Organizational Documents.

(a) Attached hereto as Exhibit D are true, correct, and complete copies of all of the Organizational Documents of the Property Owner in effect as of the date hereof. The Organizational Documents of the Property Owner are in full force and effect and have not been modified or amended except as attached hereto as Exhibit D. Pledgor is not in default of any of

its obligations under the Organizational Documents of the Property Owner or Pledgor. Pledgor shall not allow the Property Owner to (a) amend any provision of its Organizational Documents, except to the extent expressly permitted by the Loan Agreement, (b) dissolve, liquidate, wind-up, merge or consolidate with any other Person, or (c) Transfer any of its assets or properties to any Person except to the extent expressly permitted by the Loan Documents. The Organizational Documents of the Property Owner provide that (i) all owners of Equity Interests therein are authorized to pledge and assign all Equity Interests to Lender, and that such pledge and assignment shall include all voting, management and control rights and is not limited to economic rights; (ii) neither the exercise by Lender of any right or remedy under the Loan Documents, including, foreclosure of the Pledged Equity, nor the transfer to Lender or its successor or assign of title to the Pledged Equity, shall constitute a default or breach, or give rise to any right of first refusal or option to purchase under the Organizational Documents of the Property Owner or any other Person; (iii) until the Debt is paid in full: (A) no owners of Equity Interests in the Property Owner shall be entitled to withdraw as a member from the Property Owner or assign, encumber, or convey any interest in the Property Owner (except in favor of Lender pursuant to the Loan Documents); (B) no Equity Interests in the Property Owner shall be created, issued, redeemed, exchanged, diluted or modified; (C) the Property Owner shall not be dissolved, either voluntarily or as the result of the withdrawal or removal of any owners of Equity Interests in the Property Owner; and (D) the Organizational Documents of Property Owner shall not be modified or terminated except to the extent expressly permitted by the Loan Agreement; (iv) the Pledged Equity is and shall continue to be governed by Article 8 of the UCC; and (v) upon realization of the Equity Interests by Lender pursuant to the Loan Documents, Lender has the right to terminate (without the payment of any money and without any other restriction, condition precedent or condition subsequent) all non-member managers, managing members, officers, directors and other Persons capable of acting on behalf of the Property Owner.

(b) The Pledged Equity (1) are “securities” within the meaning of Sections 8-102(a)(15) and 8-103 of the Uniform Commercial Code, (2) are “financial assets” (within the meaning of Section 8-102(a)(9) of the Uniform Commercial Code, (3) are not credited to a “securities account” (within the meaning of Section 8-501(a) of the Uniform Commercial Code). The Organizational Agreement of Property Owner provides that the limited liability company interests in Property Owner are “securities” governed by and within the meaning of Article 8 of the Uniform Commercial Code, as from time to time amended and in effect, in the jurisdiction in which Property Owner is organized.

(c) The Pledged Equity is not and will not be subject to any contractual restriction upon the transfer thereof (except for any such restriction contained in this Agreement).

Section 3.10. Authority, Enforceability, Etc. The execution, delivery and performance of this Agreement by Pledgor will not cause a violation of or a default under the Organizational Documents of Pledgor or of the Property Owner. The execution and delivery of this Agreement and the performance of Pledgor’s obligations hereunder will not conflict with or result in a breach of the terms or provisions of any (i) Legal Requirement, (ii) agreement to which Pledgor or the Property Owner is a party or by which any of their respective assets are bound, or (iii) judgment, decree, arbitration award, or pending litigation to which Pledgor or the Property Owner is subject. No approval by, authorization or consent of, or filing with any governmental authority or any other Person is necessary in connection with the execution, delivery and performance by Pledgor of this

Agreement, or if such approval, authorization, or consent is necessary, it has been obtained and written evidence thereof has been delivered to Lender. This Agreement constitutes the valid and legally binding obligations of Pledgor and is fully enforceable against Pledgor in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and limitations imposed by general principles of equity.

Section 3.11. Taxes. Pledgor will, from time to time, prior to delinquency pay and discharge all taxes, assessments and other governmental charges imposed upon the Collateral or any part thereof or upon the income or profits therefrom, and also all taxes, assessments and other governmental charges imposed upon the lien or interest of Lender under this Agreement or in respect of the Collateral (excluding any income, franchise, or other taxes on Lender's profits).

Section 3.12. Principal Place of Business, Etc. Pledgor does not use and will not use any trade name and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of Pledgor is 2701 E. Camelback Road, Suite 150, Phoenix, Arizona 85016, and Pledgor does not have any other place of business. The jurisdiction of formation of Pledgor is set forth in the signature block of Pledgor. No change has been, or will be made, in the jurisdiction of formation or place of business of Pledgor, without the prior written consent of Lender, which consent shall not be unreasonably withheld.

Section 3.13. Irrevocable Proxy Regarding Article 8 Matters. Solely with respect to Article 8 Matters (as defined below) and irrespective of whether or not an Event of Default has occurred and is continuing, Pledgor hereby irrevocably grants and appoints Lender, from the date of this Agreement until the termination of this Agreement in accordance with its terms, as Pledgor's true and lawful proxy, for and in Pledgor's name, place and stead to vote the Pledged Equity, whether directly or indirectly, beneficially or of record, now owned or hereafter acquired, with respect to Article 8 Matters. The proxy granted and appointed in this Section 3.13 shall include, without limitation, the right to sign Pledgor's name (as a member of the Property Owner) to any consent, certificate or other document relating to an Article 8 Matter and the Pledged Equity that applicable law may permit or require, to cause the Pledged Equity to be voted in accordance with the terms of this Section 3.13. Pledgor hereby represents and warrants that Pledgor has not granted any proxies or powers of attorney with respect to Article 8 Matters or otherwise with respect to the Pledged Equity, other than those granted to Lender hereunder or under the other Loan Documents. Pledgor will not give a subsequent proxy or power of attorney or enter into any voting agreement with respect to the Pledged Equity or any Article 8 Matter and any attempt to do so shall be void and of no force or effect. The proxy granted and appointed in this Section 3.13 is (i) coupled with an interest and shall be effective, automatically and without the necessity of any action by any Person (including, without limitation, any transfer of any Pledged Equity on the record books of the Property Owner), and (ii) in addition to the proxy granted and appointed pursuant to Section 4.7 of this Agreement.

As used herein, "Article 8 Matter" means any action, decision, determination or election by Property Owner or its member(s) that its membership interests or other equity interests, or any of them, be, or cease to be, a "security" as defined in and governed by Article 8 of the UCC, and all other matters related to any such action, decision, determination or election.

Section 3.14. Settlement and Release. Pledgor shall not make any election, compromise, adjustment or settlement in respect of any of the Collateral.

ARTICLE IV - EVENT OF DEFAULT/REMEDIES

Section 4.1. Transfer Rights. Upon the occurrence of, and during the continuance of, an Event of Default, Lender shall have the right, at any time and from time to time, in its discretion, in addition to all other rights and remedies under this Agreement or the other Loan Documents or applicable law, to effect the Transfer of any or all of the Collateral in any one or more of the following ways:

(a) Register all or any part of the Collateral in the name of, or Transfer all or any part of the Collateral to, Lender, a nominee or nominees, or designee or designees, of Lender (including, without limitation, deposit any and all of the Collateral to Lender with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Lender may determine); or

(b) Sell, resell, assign and deliver any or all of the Collateral or any other security for the Secured Obligations (whether in whole or in part and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash or upon credit (by Lender only), in accordance with the applicable procedures specified in Section 5 hereof.

Section 4.2. Voting Rights, Receipt of Distributions, Etc. Upon the occurrence of, and during the continuance of, an Event of Default, Lender may, in its discretion, from time to time, exercise, either by itself or by its nominee or designee, in the name of Pledgor, the rights, powers and remedies granted to Lender hereunder and under the other Loan Documents in respect of the Collateral at any time prior to effecting the Transfer of such Collateral to Lender or its nominee or designee, or any third Person purchasers. Such rights and remedies shall include, without limitation, the right to (a) exercise all voting, consent, managerial and other rights relating to the Pledged Equity, whether in Pledgor's name or otherwise, including, without limitation, the right to appoint officers, directors, managers and other similar positions and to terminate any Person acting in such capacity, (b) demand, sue for, receive and collect all Distributions and make application thereof to the Debt in such order of priority as Lender shall elect, and (c) exercise Pledgor's rights, if any, of conversion, exchange, or subscription, or any other rights, privileges or options pertaining to any of the Pledged Equity, including, without limitation, the right to exchange, in Lender's discretion, any and all of the Pledged Equity upon the merger, consolidation, reorganization, recapitalization or other readjustment of the Property Owner. Each of the rights, powers and remedies exercised by Lender under this Section 4.2 shall be without liability to Lender, except to account for property actually received by Lender. Pledgor hereby irrevocably authorizes and directs the Property Owner, on receipt by Property Owner of notice from Lender to such effect, to deem and treat Lender or its nominee in all respects as a member (and not merely an assignee of a member) of the Property Owner, entitled to exercise all the rights, powers and privileges thereof, to receive all Distributions, to be credited with the capital account and to have all other rights, powers and privileges pertaining to the Pledged Equity to which Pledgor would have been entitled had Pledgor not executed this Agreement. Pledgor agrees to take all such actions and to execute all such documents as may be reasonably requested by Lender or that may otherwise be reasonably appropriate to give effect to Lender's rights under this Section 4.2.

Section 4.3. Certain Additional Rights and Remedies. Upon the occurrence of, and during the continuance of, an Event of Default, Lender may, at its discretion, from time to time, without notice to, or consent of, Pledgor or any other Person (to the extent permitted by applicable law), but without affecting any of the Secured Obligations, in the name of Pledgor or in the name of Lender: (a) notify any Person to make payment and performance directly to Lender rather than Pledgor, (b) extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Pledgor, or claims of Pledgor under any Organizational Agreement of the Property Owner, (c) file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Lender necessary or advisable for the purpose of collecting upon or enforcing any Organizational Agreement of the Property Owner, and (d) execute any instrument and do all other things deemed necessary or advisable by Lender to protect and preserve and realize upon the Collateral or any portion thereof and the other rights contemplated hereby. In addition, Lender shall have the right, in its discretion, at any time upon the occurrence and during the continuance of an Event of Default and without notice to Pledgor, to transfer the Collateral to any Person to whom the Pledged Equity may be transferred in accordance with the provisions of this Agreement.

Section 4.4. Lender Self-Help Rights.

(a) Upon the occurrence of, and during the continuance of, an Event of Default, Lender shall have the right, but not the obligation, to take any appropriate action as it may deem necessary or advisable to (i) cure any Event of Default, (ii) cause any term, covenant, condition or obligation required under this Agreement or under any other Loan Document to be promptly performed or observed on behalf of Pledgor or the Property Owner or (iii) protect the Collateral and any property or assets of the Property Owner.

(b) Lender shall not be obligated to perform or discharge any obligation of Pledgor or the Property Owner as a result of this Agreement or any other Loan Document. The acceptance by Lender of this Agreement shall not at any time or in any event obligate Lender to (i) appear in or defend any action or proceeding relating to the Collateral to which it is not a party, or (ii) take any action hereunder or thereunder, or expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Collateral.

Section 4.5. UCC Remedies, Etc.

(a) Upon the occurrence of, and during the continuance of, an Event of Default, Lender may (i) exercise any and all of the rights and remedies of a secured party under the UCC, (ii) exercise any and all other rights and remedies that may be available to Lender at law and/or in equity, and (iii) exercise all membership rights, partnership rights, powers and privileges to the same extent as Pledgor is entitled to exercise such rights, powers and privileges.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Lender in this Agreement or the other Loan Documents, in the case of an Event of Default (i) Lender shall have the right to pursue all of its rights and remedies under this Agreement and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Lender, in its sole and absolute discretion, shall determine from time to time, (ii) Lender shall not be required to either marshal assets, sell the Collateral and/or any other collateral in any particular order of alienation

(and may sell the same simultaneously and together or separately), or be subject to any “one action” or “election of remedies” law or rule with respect to the Collateral and/or any other collateral, (iii) the exercise by Lender of any remedies against any one item of Collateral and/or any other collateral will not impede Lender from subsequently or simultaneously exercising remedies against any other item of Collateral and/or other collateral, (iv) all liens and other rights, remedies or privileges provided to Lender herein shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and all Collateral has been sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Lender may resort for the payment of the Debt to any security held by Lender in such order and manner as Lender, in its discretion, may elect and Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Agreement.

Section 4.6. Power of Attorney.

(a) Without limiting any rights or powers granted to Lender while no Event of Default is continuing, Pledgor hereby irrevocably authorizes and empowers Lender, and its assigns and transfers to Lender, and constitutes and appoints Lender and its assigns, Pledgor’s true and lawful attorney-in-fact and as its agent with full power of substitution to, upon the occurrence of, and during the continuance of, an Event of Default (i) proceed from time to time in Pledgor’s name, in order to more fully vest in Lender all of the rights, powers and remedies provided for in this Agreement, including, without limitation, those rights, powers and remedies specified in Article 4 and Article 5 hereof and (ii) otherwise accomplish the purposes of this Agreement.

(b) Lender and any of its assigns, or their respective nominees, may, to the extent permitted by applicable law, either pursuant to the aforementioned power-of-attorney or otherwise, take any action and execute any instrument that Lender determines necessary or advisable to accomplish any of the matters contemplated by Section 4.6(a)(i) and/or Section 4.6(a)(ii) hereof, including without limitation: (i) execute and file proofs of claim with respect to any or all of the Collateral against the Property Owner and vote such claims with respect to all or any portion of such Collateral (A) for or against any proposal or resolution, (B) for a trustee or trustees or for a receiver or receivers or for a committee of creditors, and/or (C) for the acceptance or rejection of any proposed arrangement, plan of reorganization, composition or extension; (ii) receive, endorse and collect all drafts, checks and other instruments for the payment of money made payable to Pledgor representing any interest, payment of principal or other distribution payable in respect of the Collateral; (iii) execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which currently is, or may become, a part of the Collateral hereunder; and (iv) execute releases and negotiate settlements, as appropriate, including on account of, or in exchange for, any or all of the Collateral, or any payment or distribution received by Pledgor, or Lender on Pledgor’s behalf.

(c) The foregoing power-of-attorney is irrevocable and coupled with an interest, and any similar or dissimilar powers previously given by Pledgor in respect of the Collateral or the Property Owner to any Person other than Lender are hereby revoked. The power-of-attorney granted herein shall terminate automatically upon the termination of this Agreement in accordance with the terms hereof.

Section 4.7. Irrevocable Proxy During Event of Default. Without limiting the other terms and provisions of this Agreement, Pledgor hereby irrevocably grants and appoints Lender,

from the date of this Agreement until the termination of this Agreement in accordance with its terms, as Pledgor's true and lawful proxy, for and in Pledgor's name, place and stead to vote the Pledged Equity, whether directly or indirectly, beneficially or of record, now owned or hereafter acquired, with respect to any and all matters that Pledgor is, or may in the future become, entitled to vote upon, provided, that, in all cases, the proxy granted and appointed in this Section 4.7 may only be exercised by Lender upon the occurrence and during the continuance of an Event of Default. The proxy granted and appointed in this Section 4.7(i) shall include, without limitation, the right to sign Pledgor's name (as a member of the Property Owner) to any consent, certificate or other document relating to the Pledged Equity that applicable law may permit or require, to cause the Pledged Equity to be voted in accordance with the terms of this Section 4.7, (ii) is coupled with an interest and shall be effective, automatically and without the necessity of any action by any Person (including, without limitation, any transfer of any Pledged Equity on the record books of the Property Owner) upon the occurrence and during the continuance of an Event of Default, and (iii) is in addition to the proxy granted and appointed pursuant to Section 3.13 of this Agreement.

Section 4.8. Remedies Cumulative, Etc. The obligations of Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstances or occurrence except as specifically provided in this Agreement. The rights, powers and remedies of Lender under this Agreement and the other Loan Documents shall be cumulative and not exclusive of, and shall not be conditioned or contingent on the pursuit by Lender of, any other right, power or remedy which Lender may have against Pledgor or any other Person liable for, and/or that pledged collateral to secure, the Secured Obligations or any portion thereof whether pursuant to this Agreement, the other Loan Documents, existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's discretion. Lender shall have no duty to exercise any of the aforesaid rights, powers and remedies and shall not be responsible for any failure to do so or delay in so doing.

Section 4.9. Waiver of Notice. To the extent permitted by applicable law, Pledgor hereby waives notice of acceptance hereof, and except as otherwise specifically provided herein, Pledgor hereby waives any and all notices or demands with respect to any exercise by Lender of any rights, powers or remedies which Lender may have or to which Lender may be entitled with respect to the Collateral.

Section 4.10. Legal Requirements; Waiver by Pledgor. The exercise by Lender of any right, power or remedy under this Agreement shall be subject to applicable provisions of any applicable statutes and laws if and only to the extent that any such provisions cannot, in accordance applicable law, be waived. In each case where there exists no prohibition, under applicable law, on Pledgor waiving such provisions, Pledgor hereby waives the applicability and benefit of such provisions in respect to Lender exercising its rights, powers and remedies under this Agreement.

ARTICLE V - SALE OF THE COLLATERAL

Section 5.1. Certain Matters Relating to the Sale of Collateral. In connection with any sale or other disposition of all or any part of the Collateral pursuant to the terms of this Agreement, Lender may grant options and may impose reasonable conditions and requirements, including,

without limitation, requiring that (i) any purchaser represent that any “securities” constituting any part of the Collateral are being purchased for its own account for investment only and not with a view to distribution or resale thereof and (ii) any purchaser be eligible to acquire the Collateral under the Senior Loan Documents and the Intercreditor Agreement. If all or any of the Collateral is sold at any sale by Lender to a third Person upon credit, Lender shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Lender may resell such Collateral. It is expressly agreed that Lender may exercise its rights with respect to less than all of the Collateral, leaving unexercised its rights with respect to the remainder of the Collateral; provided, however, that such partial exercise shall in no way restrict or jeopardize Lender’s right to exercise its rights with respect to the remaining Collateral at a later time or times. Pledgor hereby waives and releases any and all rights of redemption with respect to the sale of any Collateral.

Section 5.2. Sale Procedures. No demand, advertisement or notice shall be required in connection with any sale or other disposition of all or any part of the Collateral pursuant to the terms of this Agreement, except that Lender shall give Pledgor at least ten (10) days’ prior written notice of the time and place of any public sale or of the time and the place at which any private sale or other disposition is to be made, which notice Pledgor hereby acknowledges and agrees is reasonable. All other demands, advertisements and notices are hereby waived by Pledgor. The notice of such sale shall (a) in case of a public sale, state the time and place fixed for such sale, (b) in case of a sale at a broker’s board or on a securities exchange, state the board or exchange at which such sale is to be made and the day on which the Collateral, or the portion thereof so being sold, first will be offered for sale at such board or exchange and (c) in the case of a private sale, state the date after which such sale may be consummated. Any public sale shall be held at such time or times within ordinary business hours and at such place or places as Lender may fix in the notice of such sale.

Section 5.3. Adjournment; Credit Sale. Lender shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Lender may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon any sale of all or any portion of the Collateral, Lender (or its nominee or designee) may purchase all or any portion of the Collateral being sold, free and clear of, and discharged from, any trusts, claims, equity or right of redemption of Pledgor, all of which are hereby waived and released by Pledgor to the fullest extent permitted by law, and may make payment therefor by credit against any of the Secured Obligations in lieu of cash or any other obligations.

Section 5.4. Expenses of Sale. In the case of any sale or other disposition of all or any part of the Collateral pursuant to the terms of this Agreement, Pledgor shall be responsible for the payment of all reasonable costs and expenses of every kind in any way relating to the sale and delivery of the Collateral and in any way relating to the preparation for and processing of such sale, including, without limitation, reasonable brokers’ fees and expenses, Lender’s reasonable attorneys’ fees and disbursements and any and all taxes (or similar impositions) of any kind imposed on, or relating to, the sale of the Collateral (collectively, the “**Sale Expenses**”). The proceeds of the sale of the Collateral shall be available to cover such Sale Expenses, and, after deducting such Sale Expenses from the proceeds of the sale, Lender shall apply any remaining amounts in the manner set forth in Section 5.9 hereof.

Section 5.5. Private Sale. Lender shall not incur any liability as a result of the sale of the Collateral, or any part thereof, at any private sale pursuant to this Agreement conducted in a commercially reasonable manner, it being agreed upon and understood by Pledgor that some or all of the Collateral is or may be of one or more types that threaten to decline speedily in value and that are not customarily sold in a recognized market. Pledgor hereby waives any claims against Lender arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Debt, even if Lender accepts the first offer received and does not offer the Collateral to more than one potential offeree.

Section 5.6. Securities Laws.

(a) Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the “Securities Act”), Lender may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who will agree, among other things, to acquire the Collateral for their own account, for investment and not with a view to the distribution or resale thereof (the “Securities Limitation”). Pledgor acknowledges that any such sales may be at prices and on terms, in each case, less favorable to Lender than those obtainable through a sale without the Securities Limitation and that Lender shall have no obligation to delay any sale of the Collateral for the period of time necessary to permit the issuer thereof to register it for public sale. Pursuant to Section 9-603 of the UCC, Pledgor agrees that the applicability of the SEC Limitation in respect of any foreclosure sale of the Collateral shall not cause such sale to not be commercially reasonable.

(b) Pledgor is aware that Section 9-610(c) of the UCC may restrict Lender’s ability to purchase the Collateral at a private sale. Pledgor is also aware that Securities and Exchange Commission (the “SEC”) staff personnel have, over a period of years, issued various No-Action Letters that describe procedures which, in the view of the SEC staff, permit a foreclosure sale of securities to occur in a manner that is public for purposes of Part 6 of Article 9 of the UCC, yet not public for purposes of Section 4(2) of the Securities Act. Pledgor is also aware that Lender may wish to purchase the Pledged Equity or any portion thereof that is sold at a foreclosure sale, and Pledgor believes and agrees that such purchases would be appropriate in circumstances in which such interests are sold in substantial conformity with the principles set forth in such No-Action Letters. Section 9-603 of the UCC permits Pledgor to agree on the standards for determining whether Lender has complied with its obligations under Section 9-610 of the UCC. Pursuant to Section 9-603 of the UCC, Pledgor specifically agrees that a foreclosure sale conducted in substantial conformity with the principles set forth in such No-Action Letters (a) shall be considered to be a “public disposition” for purposes of Section 9-610(c) of the UCC; (b) will be considered commercially reasonable notwithstanding that Lender has not registered or sought to register the interests under the Securities Act, even if Pledgor or the Property Owner agree to pay, or reimburse Lender for, all costs of the registration process; and (c) shall be considered to be commercially reasonable, notwithstanding that Lender purchases such interests at such a sale.

Section 5.7. Limitation on Sale to Only Eligible Purchasers. Pledgor recognizes that, by reason of certain provisions of, respectively, the Senior Loan Documents and the Intercreditor Agreement, Lender may be compelled, with respect to any sale of all or any part of the Collateral, to limit prospective purchasers to those who are, among other things, eligible under the terms of

the Senior Loan Documents and the Intercreditor Agreement to acquire the Pledged Equity (the “**Eligible Purchaser Limitation**”). Pledgor acknowledges that the Eligible Purchaser Limitation may, in respect of any sale of the Collateral by Lender, (i) substantially reduce the number of potential prospective purchasers that would, but for the existence of the Eligible Purchaser Limitation, be interested in acquiring the Collateral, and (ii) result in prices and terms, in each case, less favorable to Lender than those obtainable through a sale where the Eligible Purchaser Limitation did not apply. Pursuant to Section 9-603 of the UCC, Pledgor agrees that the applicability of the Eligible Purchaser Limitation in respect of any foreclosure sale of the Collateral shall not cause such sale to not be commercially reasonable.

Section 5.8. Receipt of Sales Proceeds. Upon any sale or other disposition of all or any part of the Collateral pursuant to the terms of this Agreement, the receipt of the proceeds by Lender or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication or non-application thereof.

Section 5.9. Application of Collateral Proceeds and Distributions. All proceeds from the sale of all or any portion of the Collateral received by Lender, shall be applied by Lender in the following order of priority: (i) first, against the Sale Expenses, (ii) second, against the Debt in such order and priority Lender shall elect and (iii) the balance, if any, to such Persons as may be entitled to same in accordance with applicable law. All Distributions now or at any time hereafter received or retained by Lender pursuant to the provisions of this Agreement shall be applied by Lender against the Debt in such order and priority Lender shall elect.

Section 5.10. Admission as Member; Lender Authority. If the Pledged Equity is sold or otherwise transferred to Lender, its nominee or any third Person (each, in such capacity, an “**Enforcement Transferee**”) by an assignment-in-lieu of foreclosure, strict foreclosure, public or private sale or otherwise in connection with Lender exercising its remedies under this Agreement (each, an “**Enforcement Transfer**”), the following shall apply (all without the necessity of any further action on the part of Pledgor): (A) the Enforcement Transferee shall, automatically upon such Enforcement Transfer, be admitted as a new member and owner of Property Owner to the extent of the Pledged Equity so transferred to such Enforcement Transferee, and (B) Pledgor shall, from and after such Enforcement Transfer, no longer be a member or owner of the Property Owner and Pledgor shall be deemed to have withdrawn as member and owner of Property Owner, in each case, to the extent such Pledged Equity has been so transferred. Pledgor hereby irrevocably authorizes and directs Property Owner, upon each Enforcement Transfer (a) to deem and treat the Enforcement Transferee in all respects as a member (and not merely an assignee of a member) of Property Owner, entitled to exercise all the rights, powers and privileges (including, without limitation, the right to vote on or take any action with respect to company matters pursuant to the Organizational Documents of the Property Owner, to receive all Distributions, and to be credited with the members’ capital attributable to the Pledged Equity so transferred) appertaining to such membership interests to which Pledgor would have been entitled had Pledgor’s membership interests not been transferred to the Enforcement Transferee and (b)(i) to file an amended certificate of formation, (ii) to amend the Organizational Documents of Property Owner in any manner deemed appropriate by the Enforcement Transferee, and (iii) to execute and deliver consents of members providing for the admission of the Enforcement Transferee as a member of

the Property Owner in place of Pledgor. The foregoing authorization and instructions to Property Owner are irrevocable, may be relied upon by Property Owner and may not be modified in any manner other than by Lender sending to Property Owner a written notice terminating such authorization and direction. Furthermore, in connection with any Enforcement Transfer, Lender may and, is hereby irrevocably authorized by Pledgor to, at any time and from time to time, (x) complete the Assignment of Interest by inserting the Effective Date (as defined therein) and the name of the Enforcement Transferee thereunder and deliver to such Enforcement Transferee each Assignment of Interest so executed and delivered by Pledgor, (y) otherwise execute, complete and date, any endorsements, assignments and other instruments and documents necessary or deemed advisable by Lender to effectuate an Enforcement Transfer, and (z) do all other things, take such actions and/or execute such documents and instruments as Lender deems appropriate or advisable to effectuate any Enforcement Transfer.

Section 5.11. No Marshaling/Preferences. Lender shall have no obligation to marshal any assets in favor of Pledgor or any other Person or against, or in payment of, any or all of the Debt. To the extent Pledgor makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Secured Obligations intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

ARTICLE VI - MISCELLANEOUS PROVISIONS

Section 6.1. Further Assurances. Pledgor hereby agrees to sign and deliver to Lender such documents, agreements, and instruments, all in form and content reasonably acceptable to Lender, and perform such further reasonable acts, in each case, as Lender may, from time to time, reasonably request or which are reasonably necessary or advisable to (i) establish and maintain a valid and perfected security interest in the Collateral (and to pay any filing fees relative thereto) and (ii) to further assure and/or confirm Lender's rights and remedies hereunder. Without limiting the foregoing, Pledgor authorizes Lender, to the extent permitted by law, to file such financing statements and amendments thereto and continuations thereof relating to all or any part of the Collateral, including, without limitation, one or more financing statements indicating that such financing statements cover all assets or all personal property (or words of similar effect) of Pledgor, in each case without the signature of Pledgor (including, to the extent permitted by law, to file a photographic or other reproduction of this Agreement).

Section 6.2. No Release, Etc. No delay or omission to exercise any remedy, right or power accruing upon a default or an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed by Lender to be expedient. A waiver of any default or Event of Default shall not be construed to be a waiver of any subsequent default or Event of Default or to impair any remedy, right or power of Lender. Any and all of Lender's rights with respect to any Collateral shall continue unimpaired, and Pledgor shall be and remain obligated in accordance with the terms hereof, notwithstanding, among other things: (a) any renewal, extension, amendment or modification of, or addition or supplement to, or deletion from, this Agreement or any other Loan Document or any other instrument or agreement referred to therein, or any assignment or transfer of any thereof; (b) any waiver, consent, delay, extension of time,

indulgence or other action or inaction under or in respect of this Agreement or any other Loan Document; (c) any exercise or non-exercise of any right, remedy, power or privilege under or in respect of this Agreement or any other Loan Document; (d) any sale, exchange, release, surrender, or substitution of, or realization upon, any Collateral (except to the extent otherwise specifically agreed to in writing by Lender) or any other security held by Lender to secure the Secured Obligations; (e) the furnishing to or acceptance by Lender of any additional security to secure the Secured Obligations; (f) any right of offset, claim or defense of any party against Lender, under the Loan Documents or otherwise; or (g) any lack of perfection of, invalidity, irregularity or unenforceability of all or any part of the Secured Obligations or of any security therefor.

Section 6.3. Indemnification. Pledgor hereby agrees to defend and indemnify Lender and each Affiliate of Lender and their respective directors, managers, officers, employees, agents and attorneys from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by any of them arising out of or by reason of any claim, investigation, suit or other proceeding (1) relating to or arising out of the acts or omissions of Pledgor under this Agreement or the Organizational Documents of the Property Owner and/or (2) Lender's lien on any Collateral, provided, that, the indemnity set forth in this Section 6.3 shall exclude any such losses, liabilities, claims, damages, costs or expenses incurred by reason of the gross negligence or willful misconduct of the Person to be indemnified hereunder. Any sums that may be payable by Pledgor under this Section 6.3, together with interest thereon at the Default Rate from the applicable date(s) that any such amount is incurred or otherwise becomes due, shall be payable by Pledgor upon demand therefor made by Lender and shall constitute a portion of the Debt and be secured by the Collateral.

Section 6.4. Expenses. All costs, expenses (including, without limitation, the Sale Expenses, reasonable attorneys' fees and disbursements and payments made to third Persons under this Agreement or otherwise), and other amounts incurred by, or on behalf of, Lender in exercising any of Lender's rights, remedies and/or powers under this Agreement (including, without limitation, under Article 4 hereof and in connection with any proceeding under the Bankruptcy Code) and/or under any other Loan Document, together with interest thereon at the Default Rate from the applicable date(s) that any such amount is incurred or otherwise becomes due, shall be payable by Pledgor to Lender upon demand made therefor by Lender and shall constitute a portion of the Debt and be secured by the Collateral.

Section 6.5. Notices. All notices, consents, approvals, demands and requests required or permitted hereunder shall be given in the manner set forth in the Loan Agreement.

Section 6.6. Governing Law. THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PLEDGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

Section 6.7. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 6.8. Lender Reliance. Lender shall be entitled to rely in good faith upon any writing or other document (including, without limitation, any telegram or e-mail) reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person (but Lender shall be entitled to such additional evidence of authority or validity as it may, in its discretion, request, but it shall have no obligation to make any such request).

Section 6.9. Modification; Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, nor consent to any departure by Pledgor therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Pledgor, shall entitle Pledgor to any other or future notice or demand in the same, similar or other circumstances.

Section 6.10. Number and Gender. All references to sections and exhibits are to sections and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision, article, section or other subdivision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 6.11. Headings, Etc. The headings and captions of various paragraphs of this Agreement are for the convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 6.12. Rule of Construction. Each of the parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of this Agreement, and that this Agreement shall not be subject to the principle of construing its meaning against the party which drafted (or arranged for the drafting of) same.

Section 6.13. Other Interests of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under this Agreement or any other Loan Document by virtue of any ownership by Lender or any Affiliate of Lender of any direct or indirect equity interest any of them have, or may acquire in, Pledgor, Property Owner, or their respective Affiliates, and Pledgor hereby waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender’s exercise of any such rights or remedies.

Section 6.14. Counterparts. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 6.15. Remedies of Pledgor. If a claim or adjudication is made that Lender or its agents or nominees, has acted unreasonably, or has unreasonably delayed acting, in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent or nominee, as the case may be, has an obligation to act reasonably or promptly, Pledgor agrees that neither Lender nor its agents, shall be liable for any monetary damages, and Pledgor’s sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Pledgor agrees that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 6.16. Limitations on Lender’s Duties Regarding Collateral. Lender’s sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with any such Collateral in substantially the same manner as Lender deals with similar securities and property for its own account. Except as expressly provided in the preceding sentence, Lender shall not have any duty whatsoever concerning the Collateral, including, without limitation, pertaining to (i) the collection or protection of the Collateral or any income thereon or payments with respect thereto, or concerning the preservation of any rights relating thereto; and (ii) Lender exercising any rights, powers or remedies with respect to the Collateral, it being understood and agreed upon that such rights, powers and rights are conferred on Lender hereunder and under the other Loan Documents solely to protect Lender’s interest in the Collateral and, accordingly, shall not impose any duty upon Lender to exercise any such rights, powers or remedies. Neither Lender nor any of its Affiliates nor their respective directors, officers, employees, agents or attorneys shall be (x) liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Pledgor or any other Person, or (y) liable for any other action taken or omitted to be taken by any such Person or Persons relative to any of the Collateral hereunder or otherwise, except for such Person’s or Persons’ own gross negligence or willful misconduct.

Section 6.17. Entire Agreement. This Agreement and the other Loan Documents embody the final, entire agreement of Pledgor and Lender with respect to the Secured Obligations and supersedes any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement is intended by Pledgor and Lender as a final and complete expression of the terms of the Agreement, and no course of dealing between Pledgor and Lender, no course of performance, no trade practices, and no evidence of prior, contemporaneous or subsequent oral agreements or discussions or other extrinsic evidence of any nature shall be used to contradict, vary, supplement or modify any term of this Agreement. There are no oral agreements between Pledgor and Lender.

Section 6.18. Waiver of Right to Trial by Jury. PLEDGOR, AND BY ACCEPTANCE HEREOF, LENDER, EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY

ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HERewith. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY PLEDGOR AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

Section 6.19. Successors and Assigns. This Agreement and all obligations of Pledgor hereunder shall be binding upon the successors and assigns of Pledgor, except that Pledgor, unless otherwise expressly provided in the Loan Agreement and then only to the extent provided therein, shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of Lender. Lender shall have the right to assign its interest in this Agreement and all rights and remedies of Lender hereunder shall inure to the benefit of Lender and its successors and assigns. Neither this Agreement nor anything set forth herein is intended to, nor shall it, confer any rights on any Person other than the parties hereto and all third party rights are expressly negated.

Section 6.20. Termination. Upon the indefeasible payment and performance in full of the Secured Obligations, this Agreement shall terminate and upon Lender's execution and delivery to Pledgor of documents prepared by Pledgor and acceptable to Lender, which shall, upon such execution and delivery, terminate Lender's lien on the Collateral.

Section 6.21. Limitation on Liability. The liability of Pledgor and its direct and indirect owners hereunder shall be subject to the provisions of Article XIII of the Loan Agreement.

Section 6.22. Joint and Several Liability. Pledgor acknowledges and agrees that all obligations of Pledgor hereunder shall be joint and several, and all references to Pledgor herein shall be deemed to refer to each of such parties comprising Pledgor both individually and collectively with the other such parties.


(Pledgor Signature Appears on Next Page)

IN WITNESS WHEREOF, Pledgor has caused this Mezzanine Pledge and Security Agreement to be executed and delivered by its duly authorized officer on the date first set forth above.

PLEDGOR:

AT Seven Hills Aurora Member, LLC,
AT ALTUS Cumberland Member, LLC,
AT Eastman Member, LLC,
ATA Lanier Fayetteville Member, LLC,
AT PT Danville Member, LLC,
AT New Lenox-IL Member, LLC,
AT Auburn Plaza Member, LLC,
AT Plainfield Village Member, LLC,
Arciterra Westgate Indianapolis Member, LLC,
AT HL Burlington Member, LLC,
AT Ville Platte Member, LLC,
AT Sweden Member, LLC,
AT Mayodan Member, LLC, and
AT Longview Member, LLC,
each a Delaware limited liability company

By: Arciterra Companies, LLC,
an Arizona limited liability company,
their Manager

By: 
Name: Blaine D. Rye
Title: Vice President

Accepted as of the date first written above:

LENDER:

QUADRANT MEZZ FUND, LP,
a Delaware limited partnership

By: Quadrant Finance Partners GP, LLC,
a Delaware limited liability company
its general partner

By: _____
Name: Andrew Zeitman
Title: Manager

IN WITNESS WHEREOF, Pledgor has caused this Mezzanine Pledge and Security Agreement to be executed and delivered by its duly authorized officer on the date first set forth above.

PLEDGOR:

AT Seven Hills Aurora Member, LLC,
AT ALTUS Cumberland Member, LLC,
AT Eastman Member, LLC,
ATA Lanier Fayetteville Member, LLC,
AT PT Danville Member, LLC,
AT New Lenox-IL Member, LLC,
AT Auburn Plaza Member, LLC,
AT Plainfield Village Member, LLC,
Arciterra Westgate Indianapolis Member, LLC,
AT HL Burlington Member, LLC,
AT Ville Platte Member, LLC,
AT Sweden Member, LLC,
AT Mayodan Member, LLC, and
AT Longview Member, LLC,
each a Delaware limited liability company

By: Arciterra Companies, LLC,
an Arizona limited liability company,
their Manager

By: _____
Name: _____
Title: _____

Accepted as of the date first written above:

LENDER:

QUADRANT MEZZ FUND, LP,
a Delaware limited partnership

By: Quadrant Finance Partners GP, LLC,
a Delaware limited liability company
its general partner

By: 
Name: Andrew Zeitman
Title: Manager

SCHEDULE I**SCHEDULE OF PLEDGORS AND PROPERTY OWNERS**

Each of the following Pledgor and Property Owner entities is a Delaware limited liability company

Pledgors	Property Owners
AT Seven Hills Aurora Member, LLC	AT Seven Hills Aurora CO II, LLC
AT ALTUS Cumberland Member, LLC	AT ALTUS Cumberland GA II, LLC
AT Eastman Member, LLC	AT Eastman GA II, LLC
ATA Lanier Fayetteville Member, LLC	ATA Lanier Fayetteville GA II, LLC
AT PT Danville Member, LLC	AT PT Danville IL II, LLC
AT New Lenox-IL Member, LLC	AT New Lenox IL-Inline II, LLC
AT Auburn Plaza Member, LLC	AT Auburn Plaza IN II, LLC
AT Plainfield Village Member, LLC	AT Plainfield Village IN II, LLC
Arciterra Westgate Indianapolis Member, LLC	Arciterra Westgate Indianapolis IN II, LLC
AT HL Burlington Member, LLC	AT HL Burlington IA II, LLC
AT Ville Platte Member, LLC	AT Ville Platte LA II, LLC
AT Sweden Member, LLC	AT Sweden NY II, LLC
AT Mayodan Member, LLC	AT Mayodan NC II, LLC
AT Longview Member, LLC	AT Longview TX II, LLC

Exhibit 5

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<div style="border: 1px solid black; padding: 10px; margin: 0 auto; width: 80%;"> Thompson & Knight LLP 1722 Routh Street, Suite 1500 Dallas, Texas 75201 Attention: Dan Hopper, Esq. </div>

Delaware Department of State
 U.C.C. Filing Section
 Filed: 10:17 AM 02/11/2020
 U.C.C. Initial Filing No: 2020 1014507

 Service Request No: 20200983438

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME AT Seven Hills Aurora Member, LLC				
OR				
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS 2701 E. Camelback Road, Suite 150		CITY Phoenix	STATE AZ	POSTAL CODE 85016
		COUNTRY USA		

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME AT ALTUS Cumberland Member, LLC				
OR				
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS 2701 E. Camelback Road, Suite 150		CITY Phoenix	STATE AZ	POSTAL CODE 85016
		COUNTRY USA		

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME Quadrant Mezz Fund, LP				
OR				
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS 8333 Douglas Avenue, Suite 1350		CITY Dallas	STATE TX	POSTAL CODE 75225
		COUNTRY USA		

4. **COLLATERAL:** This financing statement covers the following collateral:

All assets and all personal property now or hereafter owned by Debtor, including all proceeds thereof.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and Instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative					
6a. Check <u>only</u> if applicable and check <u>only</u> one box:			6b. Check <u>only</u> if applicable and check <u>only</u> one box:		
<input type="checkbox"/> Public-Finance Transaction	<input type="checkbox"/> Manufactured-Home Transaction	<input type="checkbox"/> A Debtor is a Transmitting Utility	<input type="checkbox"/> Agricultural Lien	<input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licenser					

8. **OPTIONAL FILER REFERENCE DATA:**

Delaware Secretary of State - Page 1, Debtors 1-2

International Association of Commercial Administrators (IACA)

UCC FINANCING STATEMENT ADDITIONAL PARTY**FOLLOW INSTRUCTIONS**

18. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

18a. ORGANIZATION'S NAME

AT Seven Hills Aurora Member, LLC

OR

18b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

19. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (19a or 19b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

19a. ORGANIZATION'S NAME

AT Eastman Member, LLC

OR

19b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

19c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

20. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (20a or 20b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

20a. ORGANIZATION'S NAME

ATA Lanier Fayetteville Member, LLC

OR

20b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

20c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

21. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (21a or 21b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

21a. ORGANIZATION'S NAME

AT PT Danville Member, LLC

OR

21b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

21c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

22. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (22a or 22b)

22a. ORGANIZATION'S NAME

OR

22b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

22c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

23. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (23a or 23b)

23a. ORGANIZATION'S NAME

OR

23b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

23c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

24. MISCELLANEOUS:**Page 2, Debtors 3-5**

UCC FINANCING STATEMENT ADDITIONAL PARTY**FOLLOW INSTRUCTIONS**

18. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

18a. ORGANIZATION'S NAME

AT Seven Hills Aurora Member, LLC

OR

18b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

19. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (19a or 19b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

19a. ORGANIZATION'S NAME

AT New Lenox-IL Member, LLC

OR

19b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

19c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

20. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (20a or 20b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

20a. ORGANIZATION'S NAME

AT Auburn Plaza Member, LLC

OR

20b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

20c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

21. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (21a or 21b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

21a. ORGANIZATION'S NAME

AT Plainfield Village Member, LLC

OR

21b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

21c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

22. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (22a or 22b)

22a. ORGANIZATION'S NAME

OR

22b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

22c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

23. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (23a or 23b)

23a. ORGANIZATION'S NAME

OR

23b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

23c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

24. MISCELLANEOUS:**Page 3, Debtors 6-8**

UCC FINANCING STATEMENT ADDITIONAL PARTY**FOLLOW INSTRUCTIONS**

18. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

18a. ORGANIZATION'S NAME

AT Seven Hills Aurora Member, LLC

OR

18b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

19. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (19a or 19b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

19a. ORGANIZATION'S NAME

Arciterra Westgate Indianapolis Member, LLC

OR

19b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

19c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

20. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (20a or 20b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

20a. ORGANIZATION'S NAME

AT HL Burlington Member, LLC

OR

20b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

20c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

21. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (21a or 21b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

21a. ORGANIZATION'S NAME

AT Ville Platte Member, LLC

OR

21b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

21c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

22. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (22a or 22b)

22a. ORGANIZATION'S NAME

OR

22b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

22c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

23. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (23a or 23b)

23a. ORGANIZATION'S NAME

OR

23b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

23c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

24. MISCELLANEOUS:**Page 4, Debtors 9-11**

UCC FINANCING STATEMENT ADDITIONAL PARTY**FOLLOW INSTRUCTIONS**

18. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

18a. ORGANIZATION'S NAME

AT Seven Hills Aurora Member, LLC

OR 18b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

19. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (19a or 19b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

19a. ORGANIZATION'S NAME

AT Sweden Member, LLC

OR 19b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

19c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

20. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (20a or 20b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

20a. ORGANIZATION'S NAME

AT Mayodan Member, LLC

OR 20b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

20c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

21. ADDITIONAL DEBTOR'S NAME: Provide only one Debtor name (21a or 21b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

21a. ORGANIZATION'S NAME

AT Longview Member, LLC

OR 21b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

21c. MAILING ADDRESS

2701 E. Camelback Road, Suite 150

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

22. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (22a or 22b)

22a. ORGANIZATION'S NAME

OR 22b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

22c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

23. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (23a or 23b)

23a. ORGANIZATION'S NAME

OR 23b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

23c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

24. MISCELLANEOUS:**Page 5, Debtors 12-14**

Exhibit 6

INTERCREDITOR AGREEMENT

by and between

GRASS RIVER REAL ESTATE CREDIT PARTNERS LOAN FUNDING, LLC
as Senior Lender

and

QUADRANT MEZZ FUND, LP
as Mezzanine Lender

Dated as of February 10, 2020

Premises: Arciterra Portfolio

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), dated as of February 10, 2020, by and between GRASS RIVER REAL ESTATE CREDIT PARTNERS LOAN FUNDING, LLC, a Delaware limited liability company, having an address at 2977 McFarlane Road, Suite 300, Coconut Grove, Florida 33133, Attention: Legal Department (“**Senior Lender**”) and QUADRANT MEZZ FUND, LP, a Delaware limited partnership having an address at 8333 Douglas Avenue, Suite 1350, Dallas, Texas 75225 (“**Mezzanine Lender**”).

RECITALS:

WHEREAS, on the date hereof, Senior Lender made a certain mortgage loan to each of the entities set forth on **Exhibit E** attached hereto, each a Delaware limited liability company (collectively, “**Borrower**”), in the original principal amount of \$60,000,000.00 (the “**Senior Loan**”), made pursuant to the terms, provisions and conditions set forth in that certain Loan Agreement, dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”), by and between Borrower and Senior Lender, and evidenced by that certain Promissory Note, dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Note**”), made by Borrower in favor of Senior Lender in the amount of the Senior Loan, and secured by, among other things, certain deeds of trust, deed to secure debt and mortgages (collectively, the “**Senior Mortgage**”) made by Borrower granting to Senior Lender first priority liens and security interests in the real property and all improvements thereon and appurtenances thereto described in the Senior Mortgage (the “**Premises**”);

WHEREAS, on the date hereof, Mezzanine Lender made a certain mezzanine loan to each of the entities set forth on **Exhibit F** attached hereto (collectively, “**Mezzanine Borrower**”), in the original principal amount of \$10,000,000.00 (the “**Mezzanine Loan**”), made pursuant to the terms, provisions and conditions set forth in that certain Mezzanine Loan Agreement, dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Mezzanine Loan Agreement**”), by and between Mezzanine Borrower and Mezzanine Lender, and evidenced by that certain Mezzanine Promissory Note, dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Mezzanine Note**”), made by Mezzanine Borrower in favor of Mezzanine Lender in the amount of the Mezzanine Loan, and secured by, among other things, a Pledge Agreement (as hereafter defined) granting to Mezzanine Lender a first priority security interest in certain direct interests in Mezzanine Borrower; and

WHEREAS, Senior Lender and Mezzanine Lender desire to enter into this Agreement to provide for the relative priority of the Senior Loan Documents (as such term is hereinafter defined) and the Mezzanine Loan Documents (as such term is hereinafter defined) on the terms and conditions set forth below, and to evidence certain agreements with respect to the relationship between the Mezzanine Loan and the Mezzanine Loan Documents, on the one hand, and the Senior Loan and the Senior Loan Documents, on the other hand.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Mezzanine Lender each hereby agrees as follows:

Section 1. Certain Definitions: Rules of Construction. As used in this Agreement, the following capitalized terms shall have the following meanings:

“Acceptable New Guarantor Requirement” has the meaning provided in Section 6(c) herein.

“Active Control” means the exercise by Mezzanine Lender or its nominee or designee of (i) any control, (ii) any proxy rights, and/or (iii) any power of attorney granted pursuant to any of the Mezzanine Loan Documents with respect to the Equity Collateral or Borrower, including, but not limited to, any action taken by Mezzanine Lender pursuant to any such exercise to direct or cause the direction of the management, policies or activities of Borrower, including, without limitation, in connection with the commencement of any Proceeding with respect to the Equity Collateral or Borrower.

“Affiliate” means, as to any particular Person (as hereinafter defined), any Person directly or indirectly, through one or more intermediaries, Controlling, Controlled by or under common Control with the Person or Persons in question.

“Affiliated Lender” means any Person that (i) owns, directly or indirectly, in the aggregate more than twenty percent (20%) of the beneficial ownership interests of Mezzanine Lender, or (ii) possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of Mezzanine Lender, whether through the ability to exercise voting power, by contract or otherwise, in either case, during such time as such Person either (x) owns, directly or indirectly, in the aggregate more than twenty percent (20%) of the beneficial ownership interests of the Borrower, Mezzanine Borrower and/or any of their respective Affiliates, or (y) possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the Borrower, Mezzanine Borrower and/or any of their respective Affiliates, whether through the ability to exercise voting power, by contract or otherwise (but excluding any such ability arising solely through operation of the Senior Loan Documents or the Mezzanine Loan Documents).

“Affiliated Lender Conditions” shall mean at any time that all or any portion of the legal or beneficial interest in the Mezzanine Loan is held by Borrower, Mezzanine Borrower, Guarantor, Original Third Party Obligor or an Affiliated Lender, the following shall apply:

(i) Mezzanine Lender shall have no rights (and Senior Lender shall have no obligations) under Sections 5, 6(a), (c) or (e), 8, 10(b) or (c), 12, 13, 14, 15 or 16 of this Agreement, including, without limitation, any consent, consultation or approval rights, cure rights or purchase rights under those sections and articles;

(ii) All amounts recovered by Mezzanine Lender in connection with any Guaranty Claim shall be immediately turned over to Senior Lender as additional collateral for the Senior Loan and application by Senior Lender pursuant to the Senior Loan Documents;

(iii) In connection with the terms and provisions of Section 6(d), there shall be no waiver of any default interest or late charges and there shall be no waiver of any defaults or Events of Default with respect to the Senior Loan (including, without limitation, any non-monetary defaults that are not susceptible of being cured by such New Equity Owner);

(iv) Mezzanine Lender shall not have the right to (i) contest or challenge (in their capacity as named insureds) any such settlement or adjustment approved by Senior Lender, or (ii) disapprove any settlement or adjustment of any claim or any distribution of proceeds under the any insurance policies approved by Senior Lender; and

(v) Senior Lender shall have no obligation under this Agreement to send any notices to Mezzanine Lender to the extent either (x) Senior Lender has sent the same or a substantially similar notice to Borrower or (y) the underlying cause for Senior Lender's obligation to provide a notice to Mezzanine Lender was an act or omission on the part of Borrower, Mezzanine Borrower or Guarantor.

"Agreement" means this Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms herein.

"Approved Servicer" has the meaning provided in the definition of the term "Qualified Transferee."

"Assumption Agreement" has the meaning provided in Section 5(a) herein.

"Award" has the meaning provided in Section 10(d) herein.

"Borrower" has the meaning provided in the Recitals hereto.

"Borrower Group" has the meaning provided in Section 11(c) herein.

"Borrower Party" shall mean any Person, other than Borrower, that is required to be a special purpose entity pursuant to the terms of the Senior Loan Documents.

"Broad Affiliate" means, as to any particular Person, any Person, directly or indirectly through one or more intermediaries, Controlling, Controlled by or under common Control (defined only as set forth in clause (b) below) with, the Person in question. As used solely in this definition of "Broad Affiliate," "Control" means (a) the ownership, directly or indirectly, in the aggregate of twenty percent (20%) or more of the beneficial ownership interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise (other than possession of voting or control rights granted to Mezzanine Lender pursuant to the related Mezzanine Loan Documents, the exercise of which is contingent upon the occurrence and continuance of an Event of Default under the Mezzanine Loan Documents, unless and until so exercised by Mezzanine Lender). "Controlled by", "Controlling" and "under common Control with" shall have the respective correlative meanings thereto. For the avoidance of doubt, for so long as any Certificates are outstanding, Senior Lender shall not constitute a Broad Affiliate of Borrower or Mezzanine Borrower.

“Business Day” means any day other than a Saturday, Sunday or a legal holiday on which national banks are not open for general business in the State of New York.

“Cash and Cash Equivalents” shall mean all unrestricted or unencumbered (A) cash and (B) any of the following: (x) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by an agency thereof and backed by the full faith and credit of the United States; (y) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof which, at the time of acquisition, has one of the two highest ratings obtainable from any two (2) of S&P, Moody’s or Fitch (or, if at any time no two of the foregoing shall be rating such obligations, then from such other nationally recognized rating services as may be reasonably acceptable to Senior Lender) and is not listed for possible down-grade in any publication of any of the foregoing rating services; (z) domestic certificates of deposit or domestic time deposits or repurchase agreements issued by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia having combined capital and surplus of not less than \$1,000,000,000.00, which commercial bank has a rating of at least either AA or such comparable rating from S&P or Moody’s, respectively; (aa) any funds deposited or invested by such Person in accounts maintained with an institutional depository (which may include Senior Lender) and which are not held in escrow for, or pledged as security for, any obligations of such Person, Senior Borrower, Mezzanine Borrower and/or any of their affiliates; (bb) money market funds having assets under management in excess of \$2,000,000,000.00 and/or (cc) any unrestricted stock, shares, certificates, bonds, debentures, notes or other instrument which constitutes a “security” under the Security Act of 1933 (other than such Person, any Guarantor, Senior Borrower, Mezzanine Borrower and/or any of their affiliates) which are freely tradable on any nationally recognized securities exchange and are not otherwise encumbered by such Person.

“CDO” has the meaning provided in the definition of the term “Qualified Transferee.”

“CDO Asset Manager” means, with respect to any Securitization Vehicle (hereinafter defined) that is a CDO, the entity that is responsible for managing or administering the Mezzanine Loan as an underlying asset of such Securitization Vehicle or, if applicable, as an asset of any Intervening Trust Vehicle (including, without limitation, the right to exercise any consent and control rights available to the holder of the Mezzanine Loan).

“Certificates” means any securities (including all classes thereof) representing beneficial ownership interests in all or a portion of the Senior Loan or in a pool of mortgage loans including the Senior Loan or an interest in the Senior Loan issued in connection with a Securitization of the Senior Loan.

“Continuing Senior Loan Event of Default” means an Event of Default under the Senior Loan for which (i) Senior Lender has provided a Senior Loan Default Notice to Mezzanine Lender in accordance with Section 12(a) of this Agreement, (ii) Senior Lender has not waived such Event of Default in writing, (iii) such Event of Default has not been cured by Borrower or any other Person and such cure accepted by Senior Lender (or cured by Mezzanine Lender pursuant to

the terms and conditions of this Agreement) and (iv) the cure period provided to Mezzanine Lender in Section 12 of this Agreement has expired.

“Control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. “Controlled,” “Controlled by,” “Controlling” and “under common Control with” shall have the respective correlative meaning thereto.

“Conversion Conditions” means a preferred equity investment in the Mezzanine Borrower by Mezzanine Lender meeting the following criteria: (i) the redemption date of the preferred equity investment is co-terminous with the Senior Loan, (ii) a principal amount of the preferred equity investment is equal to or less than the principal amount of the Mezzanine Loan plus accrued and unpaid interest and fees with respect to the Mezzanine Loan, (iii) the Mezzanine Loan is terminated and all collateral securing the Mezzanine Loan is released simultaneous with the closing of the preferred equity investment, (iv) a current-pay interest rate, or rate of return, on the preferred equity investment, as applicable, is equal to or less than the interest rate on the Mezzanine Loan, (v) the other economic terms of the preferred equity investment are substantially similar to the Mezzanine Loan, (vi) the preferred equity investment does not create a Lien on the Premises or any other collateral for the Senior Loan, (vii) the preferred equity investment is subordinate by its terms to the Senior Loan, (viii) if requested by Senior Lender, a non-consolidation opinion, reasonably acceptable to the Senior Lender is delivered to Senior Lender with respect thereto, (ix) if requested by Senior Lender, a recognition agreement providing, amongst other things, for the subordination of the preferred equity investment to the Senior Loan Documents and restrictions on (A) transfer (1) of the preferred equity investment substantially similar to the restrictions on the transfer of the Mezzanine Loan as set forth herein, and (2) in the holder of the preferred equity investment, and (B) the amendment and modification of the preferred equity investment documents; (x) if the holder of the preferred equity investment has, or may obtain pursuant to the terms of the preferred equity investment documents, the power to direct or cause the direction of the management or policies of Mezzanine Borrower or Borrower, whether through the ability to exercise voting power, by contract or otherwise, then prior to the closing of the preferred equity investment a New Third Party Obligor shall provide Senior Lender a recourse carve out guaranty and environmental indemnity in a form substantially similar to the recourse carve out guaranty and environmental indemnity delivered to Senior Lender in connection with the closing of the Senior Loan, provided such additional recourse guaranty shall provide that such additional guarantor shall have no liability for acts committed by, or directed to be committed by, any other guarantor under the Senior Loan Documents, but only to the extent that such additional guarantor can demonstrate that such act was committed by a Person other than such additional guarantor or its Affiliates (as such term is defined in the Senior Loan Agreement) and (2) certified copies of the organizational documents and authorizations of such additional guarantor and an opinion of counsel in form reasonably satisfactory to Senior Lender and each Rating Agency regarding the due organization and authorization of such additional guarantor and the enforceability of the new recourse carve out guaranty and environmental indemnity; (xi) a Rating Agency Confirmation is delivered to Senior Lender and (xii) Mezzanine Lender reimburses Senior Lender for all out-of-pocket costs and expenses (including reasonable attorneys’ fees) incurred by Senior Lender in connection with such conversion.

“Crowdfunded Person” means a Person capitalized primarily by monetary contributions (A) of less than \$10,000 each from more than fifty (50) investors who are individuals and (B) which are funded primarily (I) in reliance upon Regulation Crowdfunding promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended and/or (II) through internet-mediated registries, platforms or similar portals, mail order subscriptions, benefit events and/or other similar methods; *provided* that a Crowdfunded Person shall not include (x) any Person that qualifies as a Qualified Transferee under subsection (E) of the definition thereof or (y) any publicly traded stock or offering or any real estate investment trust.

“DDRS” means DBRS, Inc.

“Directing Mezzanine Lender” has the meaning provided in Section 5(c) herein.

“Directing Senior Lender” has the meaning provided in Section 5(g) herein.

“Disqualified Person” means, as of the time this Agreement requires the determination whether a Person is a Disqualified Person, any Person who:

- (i) has been convicted of or is under indictment for a felony;
- (ii) is a Prohibited Person;
- (iii) is the Borrower or an Affiliate of the Borrower;
- (iv) has the benefit of sovereign immunity;
- (v) is a Crowdfunded Person; or
- (vi) is the subject of a Proceeding.

“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management or advisement) in excess of \$450,000,000 and (except with respect to a pension advisory firm, asset manager or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$250,000,000 and (ii) is regularly engaged in the business of making or owning (or, in the case of a pension advisory firm, asset manager or similar fiduciary, regularly engaged in managing or advising investments in) commercial real estate loans (including mezzanine loans to direct or indirect owners of commercial properties, which loans are secured by pledges of direct or indirect ownership interests in the owners of such commercial properties) or owning or operating commercial real estate properties or making investments in commercial real estate.

“Enforcement Action” means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or any portion thereof or Borrower, including, without limitation, the taking of possession or control of the Premises or any portion thereof, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default, statements of overdue amounts, notices of reservation of rights or partial

payment letters, imposing default interest or late charges, or notices that a cash sweep event has occurred) or (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Premises or any portion thereof.

“Equity Collateral” means all of the direct and indirect equity interests and/or ownership interests in Borrower, pledged to Mezzanine Lender pursuant to the Mezzanine Loan Documents.

“Equity Collateral Enforcement Action” means any action, proceeding or other exercise of Mezzanine Lender’s rights and remedies commenced by Mezzanine Lender (including, without limitation, the exercise of voting rights or obtaining the appointment of a receiver or similar agent with respect to the Equity Collateral) (other than the giving of notices of default and statements of overdue amounts or imposing default interest or late charges), at law, in equity, or otherwise, in order to realize upon the Equity Collateral (including, without limitation, an assignment in lieu of foreclosure or other negotiated settlement in lieu of any such enforcement action).

“Event of Default” as used herein means (i) with respect to the Senior Loan and the Senior Loan Documents, any Event of Default (as defined in the Senior Loan Agreement) thereunder which has occurred and is continuing (i.e., (a) has not been cured by Borrower, by any other Person or by Mezzanine Lender (or any Loan Pledgee) in accordance with the terms of this Agreement, (b) has not been waived in writing by Senior Lender or (c) Mezzanine Lender is not diligently exercising its cure rights as described in Section 12 herein or such rights have expired) and (ii) with respect to the Mezzanine Loan and the Mezzanine Loan Documents, any Event of Default (as defined in the Mezzanine Loan Agreement) thereunder which has occurred and is continuing (i.e., has not been cured by Mezzanine Borrower and/or waived in writing by Mezzanine Lender).

“Executive Order” has the meaning provided in the definition of the term **“Prohibited Person.”**

“Existing Management Group” shall mean the managing members of QMP Management, LLC, a Texas limited liability company, existing as of the date of this Agreement.

“Fitch” shall mean Fitch, Inc.

“Guarantor” has the meaning provided in Section 6(b) herein.

“Guaranty Claim” has the meaning provided in Section 6(b) herein.

“Initial Mezzanine Lender” means Quadrant Mezz Fund, LP, a Delaware limited partnership.

“Intervening Trust Vehicle” shall mean, with respect to any Securitization Vehicle that is a CDO, a trust vehicle or entity which holds the Mezzanine Loan as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO.

“Kicker Conditions” means any additional contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises (or similar equity participation) that does not (i) become payable or otherwise impose monetary obligations prior to the date the Senior Loan is no longer outstanding, or (ii) violate any applicable law.

“Kroll” shall mean Kroll Bond Rating Agency, Inc.

“Liquidity” shall mean (a) unencumbered Cash and Cash Equivalents of the applicable guarantor, (b) certificates of deposit (with a maturity of two years or less) issued by, or savings account with, any bank or other financial institution reasonably acceptable to Senior Lender and (c) marketable securities of the applicable guarantor, each valued in accordance with GAAP (or other principles reasonably acceptable to Senior Lender) and (d) the amount, without duplication, of unfunded capital commitments and callable capital of the partners or members, as applicable, of such Person to the extent unencumbered with respect to which there are no unsatisfied conditions to funding such commitments (other than the giving of notice or other administrative requirements), less (for clause (d) only) (i) the amount of indebtedness secured (in whole or in part) by such uncalled capital commitments and callable capital, and less (ii) the total amount of a capital commitment or callable capital from a limited partner or member, as applicable, that (A) is in breach or otherwise in default on its obligations to make capital contributions to such Person under the limited partnership agreement of such Person or any other agreement relating to the making of its capital contributions, (B) is subject to a proceeding under the Bankruptcy Code, or (C) has made any public statements indicating that it does not intend to make any further capital contributions in connection with its investments generally (unless such Person has been informed in writing by such limited partnership that it intends to continue making capital contributions to such Person notwithstanding any such public statement).

“Loan Pledgee” has the meaning provided in Section 16 herein.

“Loan Purchase Price” has the meaning provided in Section 14(a) herein.

“Managerial Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

“Mezzanine Borrower” has the meaning provided in the Recitals hereto.

“Mezzanine Lender” has the meaning provided in the first paragraph of this Agreement.

“Mezzanine Loan” has the meaning provided in the Recitals hereto.

“Mezzanine Loan Agreement” has the meaning provided in the Recitals hereto.

“Mezzanine Loan Documents” means the Mezzanine Loan Agreement, the Mezzanine Note, the Pledge Agreement and the other documents described on Exhibit C hereto, together with all documents and instruments executed in connection with the Mezzanine Loan, as

any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“**Mezzanine Loan Modification**” has the meaning provided in Section 8(b) herein.

“**Mezzanine Note**” has the meaning provided in the Recitals hereto

“**Minimum Obligor Financial Threshold**” means, with respect to one or more New Third Party Obligors, in the aggregate, a minimum Net Worth and a minimum Liquidity as required by the Senior Loan Guaranty..

“**Monetary Cure Period**” has the meaning provided in Section 12(b) herein.

“**Moody’s**” shall mean Moody’s Investor Service, Inc.

“**Morningstar**” shall mean Morningstar, Inc.

“**Net Worth**” shall mean net worth as calculated in accordance with generally accepted accounting principles (or other principles reasonably acceptable to Senior Lender).

“**New Equity Owner**” has the meaning provided in Section 6(a) herein.

“**New Guaranty**” has the meaning provided in Section 6(a) herein.

“**New Mezzanine Loan**” has the meaning provided in Section 15(c) hereof.

“**New Mezzanine Loan Modification Documents**” has the meaning provided in Section 15(c) hereof.

“**New Mezzanine Loan Notice**” has the meaning provided in Section 15(c) hereof.

“**New Third Party Obligor**” means one or more Persons who: (i) collectively satisfy the Minimum Obligor Financial Threshold; (ii) for each Person comprising the New Third Party Obligor, is not a Disqualified Person, (iii) (x) owns (or will own upon foreclosure) at least ten percent (10%) of the direct or indirect equity interests in Borrower and (y) Controls or is under common Control with Borrower, (iv) if two or more Persons shall comprise the New Third Party Obligor then the obligations of all such Persons shall be joint and several, (v) intentionally omitted, (vi) is not then the subject of a Proceeding, (vii) is an entity which has organizational documents that require it to have a minimum term of existence ending no earlier than twelve (12) months after the then-applicable Maturity Date (as defined in the Senior Loan Agreement), (viii) is not a Prohibited Person and (ix) is a U.S. Person or a United States-based branch of a foreign-based banking institution.

“**Non-Monetary Cure Period**” has the meaning provided in Section 12(c) herein.

“**Original Third Party Obligor**” has the meaning provided in Section 6(a) herein.

“**Ownership and Control Requirements**” shall be deemed satisfied with respect to any Person to the extent that: (i) the majority of the members of the Existing Management Group

shall collectively possess Managerial Control of said Person and (ii) said members of the Existing Management Group who possess Managerial Control of said Person shall collectively maintain no less than a ten percent (10%) direct and/or indirect beneficial interest in said Person.

“Permitted Cure Period” means, with respect to any non-monetary default, the period that commences on the date of Transfer of title to the Equity Collateral to the New Equity Owner in accordance with the provisions of Section 6(a) (the **“Transfer Date”**) and ends the number of days after the Transfer Date that is equal to the number of days provided for a cure of such non-monetary default in the Senior Loan Agreement; provided that such number of days shall commence on the later of (i) the Transfer Date and (ii) the date on which the New Equity Owner receives written notice of the applicable non-monetary default, provided that if a Senior Loan Default Notice was delivered to Mezzanine Lender prior to the Transfer Date with respect to such non-monetary default, such notice requirement shall be deemed satisfied with respect to the specific default referenced therein.

“Permitted Fund Manager” means any Person that, on the date of determination, (i) is not subject to a Proceeding, (ii) is not a Disqualified Person, (iii) is (a) approved by the Rating Agencies (for purposes of this Agreement) as a **“Permitted Fund Manager”**, as evidenced by a Rating Agency Confirmation, (b) one of the entities listed on Exhibit D attached hereto, or the successor-in-interest thereto or a Person controlling, Controlled by or under common control with, any such entity, or any other nationally recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, or (c) an entity that is otherwise a Qualified Transferee pursuant to clauses (A), (B), (C), (D) or (F) of the definition thereof, and (iv) is investing through one or more funds with committed capital of at least \$250,000,000.

“Person” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government or any agency, department or agency thereof, endowment fund or any other form of entity.

“Pledge” has the meaning provided in Section 16 herein.

“Pledge Agreement” has the meaning provided in the Recitals hereto.

“Policies” has the meaning provided in Section 10(e) herein.

“Premises” has the meaning provided in the Recitals hereto.

“Prior Obligations” means obligations which (i) arose as a result of actions, conditions, or omissions first arising or created before the date Mezzanine Lender (or any New Equity Owner) actually acquired title to the Equity Collateral, or (ii) were caused, increased, enhanced or exacerbated by the direct or indirect action or inaction of Borrower, Mezzanine Borrower, any guarantor, indemnitor or obligor under the Senior Loan Documents, or any officers, members, shareholders, directors, employees, affiliates or agents of the foregoing.

“Proceeding” has the meaning provided in Section 11(c) herein.

“Prohibited Equity Collateral” means funds obtained, directly or indirectly, from funds that were distributed by Borrower in violation of the terms of the Senior Loan Documents.

“Prohibited Person” means any Person:

- (i) listed in the annex to, or who is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the **“Executive Order”**):
- (ii) that is owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) with whom a Person is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;
- (iv) who commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order;
- (v) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of such list; or
- (vi) who is an Affiliate of a Person listed in clauses (i) through (v) above.

“Property Manager” means Ali Bubba Inc., a Nevada corporation, dba The Equity Group, or any successor thereto as property manager of the Premises.

“Protective Advances” means all sums advanced for the purpose of payment of real estate taxes (including special assessments or payments in lieu of real estate taxes), maintenance costs, insurance premiums, ground rents or other items (including capital expenses and leasing costs such as (without limitation) leasing commissions and tenant improvement allowances) reasonably necessary to protect the Premises or the Separate Collateral respectively, or any portion thereof (including, but not limited to, all reasonable out-of-pocket attorneys’ fees, costs relating to the entry upon the Premises or any portion thereof to make repairs and the payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Senior Lender or Mezzanine Lender appears to be prior or superior to the Senior Loan Documents or the applicable Mezzanine Loan Documents) or the Separate Collateral or any portion thereof, respectively, from forfeiture, casualty, loss or waste, including, with respect to the Senior Loan or the Mezzanine Loan, amounts advanced or otherwise paid by Mezzanine Lender pursuant to Section 12 herein.

“Purchase Notice” has the meaning provided in Section 14(a) herein.

“Purchase Option Event” has the meaning provided in Section 14(a) herein.

“Qualified Manager” shall mean a property manager of the Premises, which (a) (i) is a reputable and experienced management company having at least five (5) years’ experience in the management of commercial properties with similar size, scope and use as the Premises and in the jurisdiction in which the Premises are located, (ii) has, for at least five (5) years prior to its engagement as property manager, managed at least five (5) properties similar in size, scope and use as the Premises which comprise in the aggregate at least equal to the lesser of (x) five times the leasable square footage of the Premises and (y) 1,000,000 leasable square feet of commercial retail space, and (iii) is not the subject of a Proceeding, or (b) any other property manager approved by Senior Lender and Mezzanine Lender (which approval shall not be unreasonably withheld, it being agreed that it shall be reasonable for Senior Lender or Mezzanine Lender, as applicable, to withhold approval if the proposed property manager would not satisfy the applicable guidelines of the Rating Agencies). The parties hereto agree that Howard Hughes Corporation is a Qualified Manager, so long as (i) no management agreement with such Person has been terminated pursuant to the terms of the Senior Loan Documents or pursuant to the terms hereof and (ii) there has been no material adverse change to the condition (financial or otherwise) of such Person between the date hereof and the date on which such Person becomes the Property Manager.

“Qualified Transferee” means (i) Initial Mezzanine Lender, to the extent it satisfies the Ownership and Control Requirements, or (ii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, sovereign fund, government entity or plan that satisfies the Eligibility Requirements;

(B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, that, in any case, satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clauses (ii)(A) or (B) that satisfies the Eligibility Requirements;

(D) any entity Controlled by, Controlling or under common control with any of the entities described in clause (i) or clauses (ii)(A), (B), (C) or (E) of this definition;

(E) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (ii)(A), (B), (C), or (D) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition, an institutional “accredited investor” within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, a “qualified institutional buyer” within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such institutional “accredited investors” or “qualified institutional

buyers” that are used to satisfy the fifty percent (50%) test set forth above in this clause (E) satisfy the financial tests set forth in clause (i) of the definition of Eligibility Requirement;

(F) a Qualified Trustee (or, in the case of collateralized debt obligations (“CDO”), a single-purpose bankruptcy-remote entity which contemporaneously assigns or pledges its interest in the Mezzanine Loan to a Qualified Trustee) in connection with (aa) a securitization of, (bb) the creation of a CDO secured by, or (cc) a financing through an “owner trust” of, the Mezzanine Loan (any of the foregoing, a “**Securitization Vehicle**”); provided that (1) one or more classes of securities issued by such Securitization Vehicle is initially rated at least investment grade by each of the Rating Agencies which assigned a rating to one or more classes of securities issued in connection with such securitization (it being understood that with respect to any Rating Agency that assigned such a rating to the securities issued by such Securitization Vehicle, a Rating Agency Confirmation will not be required in connection with a transfer of the Mezzanine Loan to such Securitization Vehicle, except that if one or more classes of securities issued in connection with such Securitization is rated by Moody’s, the transferee may not rely on this clause (1) with respect to Moody’s); (2) in the case of a Securitization Vehicle that is not a CDO, the special servicer of such Securitization Vehicle has the Required Special Servicer Rating at the time of Transfer and the related transaction documents for such Securitization Vehicle require that any successor have the Required Special Servicer Rating (such entity, an “**Approved Servicer**”) and such Approved Servicer is required to service and administer the Mezzanine Loan in accordance with servicing arrangements for the assets held by the Securitization Vehicle which require that such Approved Servicer act in accordance with a servicing standard notwithstanding any contrary direction or instruction from any other Person; or (3) in the case of a Securitization Vehicle that is a CDO, the CDO Asset Manager and, if applicable, each Intervening Trust Vehicle that is not administered and managed by a CDO Asset Manager which is a Qualified Transferee, are each a Qualified Transferee under clauses (ii)(A), (B), (C), (D) or (E) of this definition;

(G) any Person that has been approved as a Qualified Transferee by the Senior Lender pursuant to this Agreement with respect to such Transfer;

(H) following a Securitization, any Person (as transferee) as to which the Rating Agencies have issued a Rating Agency Confirmation with respect to such Transfer; or

(I) any Person that is a Qualified Transferee (pursuant to any of the foregoing clauses) that is acting in any agency capacity in connection with a lending syndicate, so long as more than fifty percent (50%) of the lenders in the lending syndicate (by loan balance or committed loan amounts) are themselves Qualified Transferees pursuant to any of the foregoing clauses.

Notwithstanding the foregoing, no Person shall be (or be deemed to be) a Qualified Transferee if such Person is (i) the subject of any Proceeding, (ii) a Prohibited Person, (iii) Borrower or Mezzanine Borrower, or any Broad Affiliate of Borrower or Mezzanine Borrower or (iv) a Delaware Statutory Trust, a tenant-in-common or a Crowdfunded Person.

“Qualified Trustee” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two (2) rating categories of S&P and either Fitch or Moody’s (provided, however, if the Senior Loan has been securitized, the rating requirement of any agency not a Rating Agency will be disregarded).

“RA Consent” has the meaning provided in the definition of the term **“Rating Agency Confirmation.”**

“RAC Declination Event” has the meaning provided in the definition of the term **“Rating Agency Confirmation.”**

“RAC Refusal Event” has the meaning provided in the definition of the term **“Rating Agency Confirmation.”**

“Rating Agencies” shall mean, prior to a Securitization, each of S&P, Moody’s, Fitch, DBRS, Kroll and Morningstar, or any successor thereto, or any other nationally-recognized statistical rating agency which has been approved by Senior Lender and, after a Securitization, shall mean any of the foregoing that have been designated by Lender to rate the Certificates.

“Rating Agency Confirmation” shall mean a written affirmation from each of the Rating Agencies that the credit rating of the Certificates by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. For the purposes of this Agreement, if (1) any Rating Agency shall waive, decline or refuse to review or otherwise engage any request for a Rating Agency Confirmation hereunder (collectively, a **“RAC Declination Event”**), or (2) Senior Lender (or any servicer acting on Senior Lender’s behalf) determines pursuant to and in accordance with any applicable pooling and servicing agreement that a Rating Agency Confirmation is not required and/or elects not to obtain or cause to be obtained such Rating Agency Confirmation with respect to such request (a **“RAC Refusal Event”**) (hereinafter, each of an RAC Declination Event and a RAC Refusal Event, collectively, a **“RA Consent”**), such RA Consent shall be deemed to eliminate, for such request only, the condition that a Rating Agency Confirmation by such Rating Agency (only) be obtained for purposes of this Agreement; provided, however, if Senior Lender does not have a separate and independent approval right with respect to such event set forth herein, then the term **“Rating Agency Confirmation”** shall be deemed instead to require the approval of Senior Lender based on its good faith determination of the request made hereunder. For purposes of clarity, any RAC Declination Event or RAC Refusal Event, as applicable, shall not be deemed a RAC Declination Event or RAC Refusal Event, as applicable, for any subsequent request for a Rating Agency Confirmation hereunder, and the condition for Rating Agency Confirmation pursuant to this Agreement for any subsequent request shall apply regardless of any previous RAC Declination or RAC Refusal Event, as applicable.

“Realization Event” has the meaning provided in Section 6(a) herein.

“Redirection Notice” has the meaning provided in Section 16 herein.

“Required Special Servicer Rating” means a special servicer that (a) has a rating of “CSS1” in the case of Fitch, (b) is on S&P’s select servicer list as a “U.S. Commercial Mortgage Special Servicer” in the case of S&P, (c) in the case of Moody’s, such special servicer is acting as a transaction-level special servicer in a commercial mortgage loan securitization that was rated by Moody’s within the twelve (12) month period prior to the date of determination and Moody’s has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities as the reason for such downgrade or withdrawal, (d) in the case of Morningstar, such special servicer has a ranking by Morningstar equal to or higher than “MOR CS3” as a special servicer, is acting as special servicer in a commercial mortgage loan securitization that was rated by a Rating Agency within the twelve (12) month period prior to the date of determination, and Morningstar has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities as the reason for such downgrade or withdrawal, (e) in the case of DBRS, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by DBRS within the twelve (12) month period prior to the date of determination and DBRS has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities as the reason for such downgrade or withdrawal and (f) in the case of Kroll, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Kroll within the twelve (12) month period prior to the date of determination and Kroll has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities as the reason for such downgrade or withdrawal. The requirement of any agency not a Rating Agency shall be disregarded.

“S&P” means Standard & Poors Ratings Services, a division of The McGraw-Hill Companies, Inc.

“Securitization” means the sale or securitization of the Senior Loan (or any portion thereof) in one or more transactions through the issuance of securities, which securities may be assigned ratings by the Rating Agencies.

“Securitization Vehicle” has the meaning provided in the definition of the term “Qualified Transferee.”

“Senior Lender” has the meaning provided in the first paragraph of this Agreement.

“Senior Loan” has the meaning provided in the Recitals hereto.

“Senior Loan Agreement” has the meaning provided in the Recitals hereto.

“Senior Loan Cash Management Agreement” means any cash management agreement or agreements executed in connection with, or cash management provisions of, the Senior Loan Documents.

“Senior Loan Default Notice” has the meaning provided in Section 12(a) herein.

“Senior Loan Documents” means the Senior Loan Agreement, Senior Note, the Senior Mortgage, and the Senior Loan Cash Management Agreement, together with the instruments and documents set forth on Exhibit B hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“Senior Loan Guaranty” has the meaning provided in Exhibit B hereto.

“Senior Loan Liabilities” shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Senior Loan Documents and all amounts due or to become due pursuant to the Senior Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“Senior Loan Modification” has the meaning provided in Section 8(a) herein.

“Senior Mortgage” has the meaning provided in the Recitals hereto.

“Senior Note” has the meaning provided in the Recitals hereto.

“Senior Notice of Option” has the meaning provided in Section 14(a) herein.

“Separate Collateral” means (i) the Equity Collateral, (ii) any and all accounts, reserves and escrows (and monies therein from time to time) established or pledged pursuant to the Mezzanine Loan Documents, (iii) the UCC Policy and the mezzanine endorsement to the owner’s title insurance policy issued in connection with the Mezzanine Loan, and (iv) any other collateral (including any guaranty, indemnity or interest rate cap or hedging agreement given in connection with the Mezzanine Loan) or benefits given as security for the Mezzanine Loan pursuant to the related Mezzanine Loan Documents, in each case not directly constituting security for the Senior Loan.

“Third Party Agreement” has the meaning provided in Section 6(a) herein.

“Transfer” means any assignment, pledge, conveyance, sale, transfer, mortgage, encumbrance, grant of a security interest, issuance of a participation interest, or other disposition, either directly or indirectly, by operation of law or otherwise.

“Transfer Date” shall have the meaning specified in the definition of “Permitted Cure Period.”

“**U.S. Person**” means an individual citizen of the United States, or an entity that is formed or organized in any State of the United States.

(a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement and the terms defined in this Agreement have the meanings assigned to them in this Agreement, and the use of any gender herein shall be deemed to include the other genders;

(ii) terms not otherwise defined herein shall have the meaning assigned to them in the Senior Loan Documents as of the date hereof, without giving effect to any amendment, modification, replacement, supplement or waiver thereof;

(iii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement, unless otherwise specified;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to Paragraphs and other subdivisions;

(v) the headings and captions used in this Agreement are for convenience of reference only and do not define, limit or describe the scope or intent of the provisions of this Agreement;

(vi) the terms “includes” or “including” shall mean without limitation by reason of enumeration;

(vii) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(viii) the words “to Mezzanine Lender’s knowledge” or “to the knowledge of Mezzanine Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Mezzanine Lender with direct oversight responsibility for the Mezzanine Loan without independent investigation or inquiry and without any imputation whatsoever;

(ix) the words “to Senior Lender’s knowledge” or “to the knowledge of Senior Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Senior Lender with direct oversight responsibility for the Senior Loan without independent investigation or inquiry and without any imputation whatsoever; and

(x) Senior Lender and Mezzanine Lender acknowledge and agree that the Premises contemplates a portfolio of properties, and therefore any reference to the Premises in this Agreement, including, without limitation, any reference in respect of foreclosure or

deed in lieu of foreclosure of the Premises, shall be a reference to all or a portion of the Premises, as applicable.

Section 2. Characterization of Loans.

(a) Mezzanine Lender hereby acknowledges that (i) Borrower does not and will not have any liability or obligation whatsoever with respect to the Mezzanine Note or otherwise in connection with the payment of the Mezzanine Loan, (ii) the Mezzanine Loan does not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Premises or any other collateral securing the Senior Loan or otherwise grant to Mezzanine Lender the status as a creditor of Borrower, (iii) it shall not assert, claim or raise as a defense, any such lien, encumbrance or security interest in the Premises or any status as a creditor of Borrower in any action or proceeding, including any insolvency or bankruptcy proceeding commenced by or against Borrower and (iv) it shall not assert, pursue, confirm or acquiesce in any way to any recharacterization of the Mezzanine Loan as having conferred upon Mezzanine Lender any lien or encumbrance upon, or security interest in, the Premises or any portion thereof or as having conferred upon Mezzanine Lender the status of a creditor of Borrower.

(b) Notwithstanding anything in this Agreement or in the Senior Loan Documents to the contrary, Senior Lender agrees that no default or Event of Default under any of the Mezzanine Loan Documents (nor the exercise of any rights or remedies thereunder, including, without limitation, the taking of any Equity Collateral Enforcement Action in respect thereof) shall, in and of itself, constitute or give rise to a default or an Event of Default under the Senior Loan Documents, entitle Senior Lender to exercise any rights or remedies under the Senior Loan Documents or take any Enforcement Action in respect thereof pursuant to the terms hereof or entitle the Senior Lender to modify any of the terms of the Senior Loan Documents in violation of Section 8(a) of this Agreement unless the circumstances giving rise to a default or Event of Default under the Mezzanine Loan Documents give rise to an Event of Default under the Senior Loan Documents for which Senior Lender may, subject to this Agreement, exercise remedies under the Senior Loan Documents.

(c) Senior Lender hereby acknowledges that (i) Mezzanine Borrower does not and will not have any liability or obligation whatsoever with respect to the Senior Note or otherwise in connection with the payment of the Senior Loan; (ii) the Senior Loan does not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Separate Collateral securing the Mezzanine Loan; (iii) the Senior Loan does not grant to Senior Lender the status as a creditor of Mezzanine Borrower; (iv) Senior Lender shall not assert, claim, or raise as a defense, any such lien or encumbrance upon, or security interest in the Separate Collateral securing the Mezzanine Loan; (v) Senior Lender shall not assert, claim, or raise as a defense any status as a creditor of Mezzanine Borrower in any action or proceeding, including any Proceeding commenced by or against Mezzanine Borrower and (vi) Senior Lender shall not assert, pursue, confirm, or acquiesce in any way to any recharacterization of the Senior Loan as having conferred upon Senior Lender any lien or encumbrance upon, or security interest in, the Separate Collateral securing the Mezzanine Loan or as having conferred upon Senior Lender the status of a creditor of Mezzanine Borrower.

Section 3. Approval of Loans and Loan Documents.

(a) Mezzanine Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the Senior Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Senior Loan Documents, (ii) the execution, delivery and performance of the Senior Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Mezzanine Loan Documents, (iii) Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of the proceeds of the Senior Loan by Borrower or any other Person to whom Senior Lender disburses such proceeds, and (iv) any application or use of the proceeds of the Senior Loan for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Senior Loan Documents.

(b) Senior Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the Mezzanine Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Mezzanine Loan Documents, (ii) the execution, delivery and performance of the Mezzanine Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Senior Loan Documents, (iii) Mezzanine Lender is under no obligation or duty to, nor has Mezzanine Lender represented that it will, see to the application of the proceeds of the Mezzanine Loan by Mezzanine Borrower or any other Person to whom Mezzanine Lender disburses such proceeds and (iv) any application or use of the proceeds of the Mezzanine Loan for purposes other than those provided in the Mezzanine Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Mezzanine Loan Documents. Senior Lender hereby acknowledges and agrees that any conditions precedent to Senior Lender's consent to mezzanine financing as set forth in the Senior Loan Documents or any other agreements with the Borrower, as they apply to the Mezzanine Loan Documents or the making of the Mezzanine Loan, have been either satisfied or waived.

Section 4. Representations and Warranties.

(a) Mezzanine Lender hereby represents and warrants as follows:

(i) Exhibit C attached hereto and made a part hereof is a true, correct and complete listing of all of the Mezzanine Loan Documents, and all amendments thereto, in each case, as of the date hereof. To Mezzanine Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Mezzanine Loan Documents.

(ii) Mezzanine Lender is the legal and beneficial owner of the entire Mezzanine Loan free and clear of any lien, security interest, option or other charge or encumbrance, other than any lien or security interest granted to any Loan Pledgee (as hereinafter defined) as contemplated by the provisions of Section 16 herein.

(iii) There are no conditions precedent to the effectiveness of this Agreement with respect to Mezzanine Lender that have not been satisfied or waived.

(iv) Mezzanine Lender has, independently and without reliance upon Senior Lender (except with respect to the representations, warranties and covenants of Senior Lender set forth herein) and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the Mezzanine Loan.

(v) Mezzanine Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Mezzanine Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Mezzanine Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Mezzanine Lender enforceable against Mezzanine Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Mezzanine Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Mezzanine Lender of this Agreement or consummation by Mezzanine Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Mezzanine Lender, (w) to Mezzanine Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any material contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Mezzanine Lender is a party or to which any of its properties are subject, (x) to Mezzanine Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Mezzanine Lender pursuant to the terms of any such material contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument (provided, however, Mezzanine Lender and any participant in the Mezzanine Loan shall have the right to grant a lien, charge, encumbrance, claim or security interest in the Mezzanine Loan and/or the Mezzanine Loan Documents or any portion thereof or any interest therein to a Loan Pledgee as contemplated by the provisions of Section 16 herein),

(y) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Mezzanine Lender has knowledge against, or binding upon, Mezzanine Lender or upon any of the securities, properties, assets, or business of Mezzanine Lender or (z) to Mezzanine Lender's knowledge, constitute a violation by Mezzanine Lender of any statute, law or regulation that is applicable to Mezzanine Lender.

(x) The Mezzanine Loan is not cross-defaulted with any loan other than the Senior Loan, provided that repurchase and credit facilities to which the Mezzanine Lender is a party may be cross-defaulted to the Mezzanine Loan. The Premises do not secure any loan from Mezzanine Lender to Mezzanine Borrower or any other Affiliate of Borrower.

(xi) Mezzanine Lender is not an Affiliated Lender.

(xii) The Existing Management Group collectively possesses Managerial Control of Initial Mezzanine Lender and the Existing Management Group collectively holds no less than a ten percent 10% direct and/or indirect interest in the Initial Mezzanine Lender.

(b) Senior Lender hereby represents and warrants as follows:

(i) Exhibit B attached hereto and made a part hereof is a true, correct and complete listing of the Senior Loan Documents, and all amendments thereto, as of the date hereof. To Senior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Senior Loan Documents.

(ii) Senior Lender is the legal and beneficial owner of the Senior Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(iii) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(iv) Senior Lender has, independently and without reliance upon Mezzanine Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the Senior Loan.

(v) Senior Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Senior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Senior Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Senior Lender enforceable against Senior Lender in accordance with its terms subject to (x) applicable

bankruptcy, reorganization, insolvency and moratorium laws and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Senior Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Senior Lender of this Agreement or consummation by Senior Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Senior Lender, (w) to Senior Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Senior Lender is a party or to which any of its properties are subject, (x) to Senior Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Senior Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument (provided, however, Mezzanine Lender shall have the right to grant a lien, charge, encumbrance, mortgage, lease, claim, security interest or other right in the Mezzanine Loan or any portion thereof to a Loan Pledgee as contemplated by the provisions of Section 16 herein), (y) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Senior Lender has knowledge against, or binding upon, Senior Lender or upon any of the securities, properties, assets, or business of Senior Lender or (z) to Senior Lender's knowledge, constitute a violation by Senior Lender of any statute, law or regulation that is applicable to Senior Lender.

(x) The Senior Loan is not cross-defaulted with any other loan. The Premises do not secure any other loan from Senior Lender to Borrower, Mezzanine Borrower or any other Affiliate of Borrower.

(xi) The Senior Loan is not secured by any direct or indirect equity or ownership interest in Borrower.

Section 5. Transfer of Mezzanine Loan or Senior Loan.

(a) Mezzanine Lender shall not Transfer (other than in connection with a Pledge pursuant to Section 16 herein) more than forty-nine percent (49%) of its legal and/or beneficial interest in the Mezzanine Loan (when aggregated with all prior Transfers of the Mezzanine Loan by Mezzanine Lender) unless either (i) a Rating Agency Confirmation has been given with respect to such Transfer, in which case the related transferee shall thereafter be deemed a "Qualified Transferee" for all purposes of this Agreement, or (ii) such Transfer is to a Qualified Transferee. Any such Transfer by Mezzanine Lender (other than to a Loan Pledgee pursuant to Section 16

herein or a participant in connection with a participation of a portion of the Mezzanine Loan pursuant to which Mezzanine Lender will continue to Control the enforcement of the Mezzanine Loan) shall be conditioned upon such transferee entering into an assumption agreement (an **"Assumption Agreement"**) with respect to this Agreement whereby such transferee shall (x) assume in writing the obligations of Mezzanine Lender hereunder, (y) agree to be bound by the terms and provisions herein and (z) remake each of the representations and warranties contained in Section 4(a), provided, (A) the representations and warranties contained in Section 4(a)(ii) may be limited to the transferee's actual knowledge and qualified to the extent that the entire Mezzanine Loan is not being transferred to such transferee, (B) the representations and warranties contained in Section 4(a)(iii) - through (viii) shall be recast to refer to the applicable assignment documents as opposed to this Agreement and (C) with respect to any such transferee that is required to be a "Qualified Transferee" pursuant to this Section 5, instead of the representation contained in Section 4(a)(xii) hereof, the applicable transferee shall represent and warrant to Senior Lender that said transferee is a "Qualified Transferee" as defined herein (and if such transferee is an Affiliate of Initial Mezzanine Lender, that the Ownership and Control Requirements have been satisfied). Notwithstanding anything to the contrary contained herein, Mezzanine Lender shall be permitted to Transfer up to forty-nine percent (49%) in the aggregate of its legal and/or beneficial interest in the Mezzanine Loan to any Person without being required to obtain the consent of Senior Lender or any other Person, and such Transfer or Transfers shall not be conditioned upon a Rating Agency Confirmation or any other consent or approval. Notwithstanding anything contained herein to the contrary, Mezzanine Lender may not Transfer all or any portion of its legal or beneficial interest in the Mezzanine Loan to Borrower, Mezzanine Borrower, Guarantor, Original Third Party Obligor or an Affiliated Lender (for the purposes of this condition, Mezzanine Lender is entitled to conclusively rely, without investigation, on the affirmative representations of the proposed transferee that such Person is not an Affiliated Lender which such representations must be made for the benefit of Senior Lender and Mezzanine Lender) unless such Transfer results in the contemporaneous extinguishment of the Mezzanine Loan. Any Transfer of all or any portion of Mezzanine Lender's legal and/or beneficial interest in the Mezzanine Loan not expressly permitted by this Section 5(a) or Section 16 shall require the prior written consent of Senior Lender, which consent may be withheld or granted in Senior Lender's sole and absolute discretion. Notwithstanding anything to the contrary contained herein, at any time that all or any portion of the legal or beneficial interest in the Mezzanine Loan is held by Borrower, Mezzanine Borrower, Guarantor, Original Third Party Obligor or an Affiliated Lender, the Affiliated Lender Conditions shall apply.

Any required approval granted by the Senior Lender to a Transfer of the Mezzanine Loan pursuant to the preceding paragraph of this Section 5 shall be valid for a period of thirty (30) days from the date such approval is granted (in each case). If the Senior Lender grants its approval (to the extent required) to a Transfer of the Mezzanine Loan pursuant to this Section 5, and the Transfer of the Mezzanine Loan is not fully, finally and unconditionally consummated within the thirty (30) day period immediately following the grant of such approval, in writing, in each case, then the Mezzanine Lender shall be required to once again seek Senior Lender's approval to any proposed Transfer. Mezzanine Lender shall hold Senior Lender's response in confidence and shall be prohibited from distributing such response (orally or in writing) to any third party, including any proposed transferee (except to the extent such disclosure is required by Applicable Law).

(b) Within ten (10) Business Days after any Transfer (other than in connection with a Pledge pursuant to Section 16 herein) of more than forty-nine percent (49%) of its beneficial interest in the Mezzanine Loan, Mezzanine Lender shall provide to Senior Lender and, if any Certificates are outstanding, to the Rating Agencies, a certification that such Transfer was made in accordance with this Section 5 (together with an executed copy of the Assumption Agreement), such certification to include the name and contact information of the Qualified Transferee and evidence, reasonably acceptable to Senior Lender, that such transferee satisfies the criteria of a Qualified Transferee (including, without limitation, financial statements, which may be required to be audited to the extent such Qualified Transferee regularly audits its financial statements).

(c) If more than one Person shall hold a direct interest in the Mezzanine Loan, the holder(s) of more than fifty percent (50%) of the principal amount of the Mezzanine Loan (unless the applicable participation or co-lender agreement among the holders of the Mezzanine Loan provide a different designation mechanism, which different mechanism shall be specified in such notice and upon which Senior Lender shall be entitled to rely without independent investigation) shall designate by written notice to Senior Lender one of such Persons (the “**Directing Mezzanine Lender**”) to act on behalf of all such Persons holding an interest in the Mezzanine Loan. The Directing Mezzanine Lender shall have the sole right to receive any notices which are required to be given or which may be given to Mezzanine Lender pursuant to this Agreement and to exercise the rights and powers given to Mezzanine Lender hereunder, including any approval rights of Mezzanine Lender; provided that until the Directing Mezzanine Lender has been so designated, the last Person known to Senior Lender to hold more than a fifty percent (50%) direct interest in the Mezzanine Loan shall be deemed to be the Directing Mezzanine Lender. Once the Directing Mezzanine Lender has been designated hereunder, Senior Lender shall be entitled to rely on such designation until it has received written notice from the holder(s) of more than fifty percent (50%) of the principal amount of the Mezzanine Loan of the designation of a different Person to act as the Directing Mezzanine Lender (unless the applicable participation or co-lender agreement among the holders of the Mezzanine Loan provide a different designation mechanism, which different mechanism shall be specified in such notice and upon which Senior Lender shall be entitled to rely without independent investigation).

(d) Mezzanine Lender acknowledges that any Rating Agency Confirmation may be granted or denied by the Rating Agencies in their sole and absolute discretion and that such Rating Agencies may charge customary fees in connection with any such action.

(e) Senior Lender may, from time to time, in its sole discretion Transfer all or any of the Senior Loan or any interest therein (such assignment shall be subject to this Agreement), and notwithstanding any such Transfer or subsequent Transfer by a transferee of Senior Lender, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the Mezzanine Loan and the Mezzanine Loan Documents in accordance with the terms and provisions of this Agreement. Any such Transfer by Senior Lender (other than in connection with a Securitization; provided such Transfer is made subject to this Agreement) shall be conditioned upon such transferee entering into an Assumption Agreement with respect to this Agreement whereby such transferee shall (x) assume in writing the obligations of Senior Lender hereunder, (y) agree to be bound by the terms and provisions herein and (z) remake each of the representations, warranties and covenants contained herein (other than the representations contained in Section 4(b)(i) herein). Notwithstanding anything contained herein to

the contrary, Senior Lender may not Transfer all or any portion of its beneficial interest in the Senior Loan to Borrower, Mezzanine Borrower, Guarantor, Original Third Party Obligor or any Affiliate thereof unless such Transfer results in the substantially contemporaneous extinguishment of the Senior Loan. Notwithstanding the foregoing prohibition, Borrower, Mezzanine Borrower, Guarantor, Original Third Party Obligor or any Affiliate thereof may purchase Certificates issued in connection with a Securitization of any portion of the Senior Loan (but may not purchase Certificates with rights (or springing rights) of a “controlling holder” as set forth in the applicable pooling and servicing agreement) and no such purchase by Borrower, Mezzanine Borrower, Guarantor, Original Third Party Obligor or any Affiliate thereof shall cause the trustee, servicer or special servicer of any Securitization of the Senior Loan or any portion thereof (or the Securitization Vehicle holding the Senior Loan or any portion thereof) to be an Affiliate of Borrower, Mezzanine Borrower, Guarantor or Original Third Party Obligor.

(f) If more than one Person shall hold a direct interest in the Senior Loan, the holder(s) of more than fifty percent (50%) of the principal amount of the Senior Loan (unless the applicable participation or co-lender agreement among the holders of the Senior Loan provide a different designation mechanism, which different mechanism shall be specified in such notice and upon which Mezzanine Lender shall be entitled to rely without independent investigation) shall designate by written notice to Mezzanine Lender one of such Persons (the “**Directing Senior Lender**”) to act on behalf of all such Persons holding an interest in the Senior Loan. Except as otherwise agreed in writing by Senior Lender and Mezzanine Lender, the Directing Senior Lender shall have the sole right to receive any notices which are required to be given or which may be given to Senior Lender pursuant to this Agreement and to exercise the rights and powers hereunder, including any approval rights of Senior Lender; provided that until the Directing Senior Lender has been so designated, the last Person known to Mezzanine Lender to hold more than a fifty percent (50%) direct interest in the Senior Loan shall be deemed to be the Directing Senior Lender. Once the Directing Senior Lender has been designated hereunder, Mezzanine Lender shall be entitled to rely on such designation until it has received written notice from the holder(s) of more than fifty percent (50%) of the principal amount of the Senior Loan of the designation of a different Person to act as the Directing Senior Lender (unless the applicable participation or co-lender agreement among the holders of the Senior Loan provide a different designation mechanism, which different mechanism shall be specified in such notice and upon which Mezzanine Lender shall be entitled to rely without independent investigation).

(g) Any Transfer in violation of the provisions of this Section 5 or not expressly permitted under the terms and provisions of this Section 5 shall be *void ab initio*.

Section 6. Foreclosure of Separate Collateral; Active Control.

(a) Mezzanine Lender shall not complete a foreclosure, assignment in lieu of any proceeding or foreclosure or other realization upon the Equity Collateral, including without limitation, obtaining title to the Equity Collateral or selling or otherwise transferring the Equity Collateral in connection with a foreclosure, assignment in lieu of any proceeding or foreclosure or other realization, or taking Active Control, and shall not exercise any rights it may have under the Pledge Agreement and the other Mezzanine Loan Documents or applicable law with respect to a foreclosure, assignment in lieu of any proceeding or foreclosure or other realization upon the Equity Collateral resulting in Mezzanine Lender obtaining title to the Equity Collateral or selling

or otherwise transferring the Equity Collateral in connection with a foreclosure, assignment in lieu of any proceeding or foreclosure or other realization without a Rating Agency Confirmation and the prior written consent of Senior Lender (to be granted or withheld in Senior Lender's reasonable discretion), (individually and collectively, a "**Realization Event**") unless (i) the transferee of the title to the Equity Collateral or entity taking Active Control is a Qualified Transferee ("**New Equity Owner**"), and (ii) the Premises will be managed by a Qualified Manager within thirty (30) days after the transfer of title to the Equity Collateral. Additionally, if a non-consolidation opinion was delivered in connection with the closing of the Senior Loan, the transferee of the Equity Collateral shall deliver a new non-consolidation opinion relating to the transferee acceptable to the Rating Agencies within thirty (30) days after the transfer of title to the Equity Collateral. Regardless of whether or not such Transfer or Realization Event results in the explicit removal or release of any guarantor, indemnitor, pledgor, or other obligor under the Senior Loan Documents (an "**Original Third Party Obligor**"), as a condition precedent to any such Transfer or Realization Event (including, without limitation, the taking of Active Control), one or more New Third Party Obligors shall execute and deliver to Senior Lender on the date of such Transfer or Realization Event, a guaranty and an environmental indemnity agreement (each, a "**Third Party Agreement**"), in each case with respect to the acts and inactions of Borrower and Borrower Group (as the same is reconstituted following the completion of a foreclosure or realization upon the Equity Collateral) arising after the date of such Transfer or Realization Event on a going forward basis (and specifically excluding any Prior Obligations), and otherwise in a form and substance substantially similar to the guaranty and environmental indemnity in effect as of the date hereof (such guaranty and environmental indemnity, individually and collectively, the "**New Guaranty**"), provided, however, that, any such New Guaranty submitted by or on behalf of an unsuccessful bidder with respect to the Equity Collateral foreclosure sale shall be null, void and of no force and effect, ab initio, and shall be returned by Senior Lender to Mezzanine Lender or to the Person submitting the same. Mezzanine Lender shall provide notice of the Transfer or Realization Event and an officer's certificate from an officer of Mezzanine Lender certifying that all conditions set forth in this Section 6(a) have been satisfied to Senior Lender and the Rating Agencies, if applicable, within thirty (30) days after any Transfer/Realization Event of the Equity Collateral pursuant to this Section 6(a). Senior Lender may request reasonable evidence that the requirements of Section 6(a)(i) and (ii) above as well as the Minimum Obligor Financial Threshold have been satisfied, including, without limitation, financial statements, which may be required to be audited if the New Third Party Obligor regularly audits its financials. Additionally, the transferee of the Equity Collateral shall deliver (or cause to be delivered) to Senior Lender or any servicer in connection with the Securitization pursuant to which such Certificates have been issued, and each Rating Agency, certified copies of the organizational documents and authorizations of the New Third Party Obligors and an opinion of counsel in form reasonably satisfactory to Senior Lender and each Rating Agency regarding the due organization and authorization of such New Third Party Obligor, the enforceability of the respective Third Party Agreement and that the substitution of the Original Third Party Obligor and the original guaranty and/or environmental indemnity agreement with the New Third Party Obligor and Third Party Agreements, would not cause a "significant modification" of the Senior Loan, as such term is defined in Treasury Regulations Section 1.860G-2(b).

(b) Nothing contained herein shall limit or restrict the right of Mezzanine Lender to exercise its rights and remedies, in law or in equity, or otherwise, in order to realize on any Separate Collateral that is not Equity Collateral (including exercising any remedy against any guarantor or

indemnitor (a “**Guarantor**”) pursuant to any limited recourse guaranty or environmental indemnity granted to Mezzanine Lender as additional support for the obligations under the Mezzanine Loan Documents) (a “**Guaranty Claim**”); provided, however, Mezzanine Lender agrees that it shall not pursue the enforcement of any judgments against any Guarantor that is also a guarantor, indemnitor or obligor under any Third Party Agreement with respect to the Senior Loan (but shall not be precluded from obtaining a judgment in any event) pursuant to this Section 6(b) unless (i) it has delivered to Senior Lender prior written notice thereof, and (ii) if any Senior Loan Liabilities (other than contingent reimbursement or indemnification obligations for which no claim has been made) are then outstanding, the proceeds of any such enforcement are promptly turned over to Senior Lender to be applied as described below if (A) Senior Lender is simultaneously exercising any rights and remedies that it may have against such Guarantor under any guaranty granted to Senior Lender as additional support for the obligations under the Senior Loan Documents (including without limitation the Guaranty and the Environmental Indemnity Agreement more particularly described on Exhibit B hereto), or (B) Senior Lender has notified Mezzanine Lender that Senior Lender has a claim against such Guarantor that is based on substantially the same acts, omissions, facts or circumstances giving rise to the related Guaranty Claim, and Senior Lender commences litigation or other action on such claim within forty-five (45) days of such notice to Mezzanine Lender (and in the case of this subclause (B), Senior Lender shall hold such proceeds in trust for Mezzanine Lender until such time as Senior Lender’s claim is resolved, and, if such claim is not resolved in Senior Lender’s favor or if Senior Lender receives payment of its claim from Guarantor, Senior Lender shall return such proceeds to Mezzanine Lender to be applied as Mezzanine Lender deems appropriate in its discretion (and if such claim is resolved in Senior Lender’s favor and Senior Lender is unable to recover payment of such claim from Guarantor, Senior Lender shall have the right to apply such proceeds to the Senior Loan Liabilities in its sole discretion). Any right of payment of Mezzanine Lender under a Guaranty Claim shall be subject and subordinate as provided in this Section 6(b) in all respects to the rights and claims of Senior Lender against such Guarantor.

(c) In the event New Equity Owner obtains title to the Equity Collateral in accordance with the provisions and conditions of this Agreement, Senior Lender hereby acknowledges and agrees that (i) any transfer or assumption fee in the Senior Loan Documents shall be waived as a condition to such Transfer; provided, however, that all reasonable, out-of-pocket expenses incurred by Senior Lender directly in connection with the exercise of its review and approval rights with respect to any such Transfer shall be paid by Mezzanine Lender or such New Equity Owner, (ii) any such Transfer shall not constitute a breach or default under the Senior Loan Documents; provided that the conditions in Section 6(a) are satisfied and (iii) Senior Lender shall be deemed to have consented to (x) the admission of such New Equity Owner as the member of each entity whose membership interests constitute a part of such Equity Collateral and (y) the amendment of the Senior Loan Documents to reflect the organizational structure of such New Equity Owner and its respective Affiliates instead of Mezzanine Borrower and its respective Affiliates. Senior Lender also acknowledges and agrees that it will not impose any unreasonable fees or delays in connection with such Transfer. In the face of any Realization Event taken by Mezzanine Lender in violation of this Agreement, or in anticipation thereof, Senior Lender shall be entitled to pursue any and all remedies available at law or in equity, including, without limitation, a temporary restraining order, preliminary injunction or other similar equitable relief to stop and enjoin same. Mezzanine Lender further acknowledges and agrees that any such violation of this Agreement would cause irreparable harm to Senior Lender.

(d) To the extent that any New Equity Owner acquires the Equity Collateral in accordance with the provisions and conditions of this Agreement, such New Equity Owner shall acquire the same subject to the Senior Loan and the terms, conditions and provisions of the Senior Loan Documents for the balance of the term thereof, which shall not be accelerated by Senior Lender solely due to such acquisition and shall remain in full force and effect; provided, however, within ten (10) days after the Transfer, such New Equity Owner shall have caused Borrower to reaffirm in writing, subject to such exculpatory provisions as are set forth in the Senior Loan Documents, all of the terms, conditions and provisions of the Senior Loan Documents on Borrower's part to be performed. For the avoidance of doubt, the parties hereto acknowledge and agree that (i) Mezzanine Lender shall not be required to cure any defaults or events of default under the Senior Loan in order to foreclose on the Equity Collateral or otherwise exercise any of the other rights and remedies under the Mezzanine Loan and (ii) such foreclosure on the Equity Collateral or exercise such other rights and remedies under the Mezzanine Loan shall not cause any defaults or events of default under the Senior Loan to be waived.

(e) In the event of a Transfer of Equity Collateral pursuant to the provisions of Section 6(a), the New Equity Owner shall (i) have the right to cure during the Permitted Cure Period any non-monetary default under the Senior Loan that remains uncured as of the date of such Realization Event and was not susceptible to cure without foreclosure of the Equity Collateral, so long as (A) the New Equity Owner is continuously and diligently pursuing a cure of such non-monetary default, (B) such default is not caused by a Proceeding of Borrower, (C) during the period in which the New Equity Owner is pursuing such cure in accordance with this Section 6(e), there is no material impairment to the value, use or operation of the Premises taken as a whole as reasonably determined by Senior Lender in good faith as a result of such non-monetary default; provided that, (I) nothing in this Section 6(e) is intended as (x) a waiver by Senior Lender of any such Event of Default or of any rights or remedies Senior Lender may have as a result of such Event of Default or otherwise under the Senior Loan Documents at law or in equity or (y) any agreement on the part of Senior Lender to extend the term of the Senior Loan or otherwise modify any of Senior Loan Documents in any respect except as expressly set forth herein, and (II) there shall be no further cure period with respect to any subsequent occurrence of any such defaults on the part of the New Equity Owner after the date of the Realization Event except as expressly set forth in the Senior Loan Documents), and (ii) have no obligation to cure any non-monetary default under the Senior Loan which (X) remains uncured as of the date of such Realization Event, and (Y) is not susceptible of being cured by the New Equity Owner within the Permitted Cure Period, provided that there is no material impairment to the value, use or operation of the Premises taken as a whole as reasonably determined by Senior Lender in good faith; provided that the cure of any such default by such New Equity Owner shall be subject to the reimbursement of Senior Lender for any interest charged by Senior Lender on any required (pursuant to an applicable pooling and servicing agreement or equivalent agreement) advances (including Protective Advances) for amounts required to be paid by Borrower pursuant to the Senior Loan Documents (excluding any late charge or default interest) and provided, further, that nothing herein shall require Mortgage Lender to waive any subsequent occurrence of any such defaults on the part of such transferee after the date of the Realization Event.

(f) Nothing contained in this Section 6 is intended (i) to limit Loan Pledgee's right under its financing documents with Mezzanine Lender to foreclose against Mezzanine Lender, provided that Loan Pledgee complies with the applicable provisions of Section 16, or (ii) if any

such Loan Pledgee has foreclosed under its financing documents as aforesaid, to limit such Loan Pledgee's right to foreclose against Mezzanine Borrower's interest in the Equity Collateral, provided that Loan Pledgee complies with the applicable provisions of this Section 6 (including, without limitation, the provisions of this Section 6 regarding Third-Party Obligors).

Section 7. Notice of Rating Confirmation.

Mezzanine Lender shall promptly notify Senior Lender of any intended action relating to the Mezzanine Loan which would require a Rating Agency Confirmation and shall cooperate with Senior Lender in obtaining such Rating Agency Confirmation or, prior to a Securitization, the consent of Senior Lender. Mezzanine Lender shall pay all reasonable fees and expenses of the Rating Agencies or, prior to a Securitization, the reasonable actual out-of-pocket fees and expenses of Senior Lender, in connection with such request. Senior Lender shall promptly notify Mezzanine Lender of any intended action relating to the Senior Loan which would require Rating Agency Confirmation pursuant to this Agreement and shall cooperate with Mezzanine Lender in obtaining such Rating Agency Confirmation. Senior Lender shall pay all reasonable fees and expenses of the Rating Agencies in connection with such request.

Section 8. Modifications, Amendments, Etc.

(a) Senior Lender shall have the right without the consent of Mezzanine Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "**Senior Loan Modification**") of the Senior Loan or the Senior Loan Documents; provided that no such Senior Loan Modification shall (i) increase the interest rate or principal amount of the Senior Loan (or the amortization of the principal thereof), (ii) increase in any other material respect any monetary obligations of Borrower under the Senior Loan Documents, including, without limitation, any obligation to pay any additional fees on the Senior Loan (other than attorneys fees and expenses), increase the amount of principal payments or modify the amortization required on the Senior Loan in any manner which would increase principal payments due under the Senior Loan, (iii) shorten the scheduled maturity date of the Senior Loan, or extend the scheduled maturity date of the Senior Loan (except that Senior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Senior Loan Documents), (iv) convert or exchange the Senior Loan into or for any other indebtedness or subordinate any of the Senior Loan to any indebtedness of Borrower, (v) waive, amend or modify the provisions limiting transfers of direct or indirect interests in Borrower or the Premises, (vi) waive, modify or amend the terms and provisions of the Senior Loan Documents with respect to (A) reserves or escrows in Senior Loan Documents and (B) the manner, timing, priority and method of the application of payments under the Senior Loan Documents or the addition of additional classes of deposit or sub-accounts thereunder (including, without limitation, by failing to use commercially reasonable efforts to cause the cash management bank to perform its obligations under the Senior Loan Cash Management Agreement, the failure of which would effectively result in a modification of the Senior Loan Documents that would violate this subparagraph (vi)), (vii) cross default the Senior Loan with any other indebtedness, (viii) provide for any contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the Premises (or other similar equity participation) or require a pledge of any direct or indirect equity interest in Borrower or Mezzanine Borrower, (ix) impose any financial covenants on Borrower not in the Senior Loan

Documents on the date hereof or materially amend any financial covenants of Borrower in the Senior Loan Documents as of the date hereof, (x) modify, amend or add any default provision, including the definition of “Default” or “Event of Default” in the Senior Loan Documents or delete or shorten any notice and cure periods provided in the Senior Loan Documents, (xi) materially modify or amend any insurance requirements under the Senior Loan Documents (including, without limitation, any deductibles, limits or qualifications of insurers) or any material casualty or condemnation provisions, (xii) release any collateral for the Senior Loan (except in accordance with terms and provisions of the Senior Loan Documents) or release any guarantor, indemnitor or obligor under any Third Party Agreement, (xiii) modify any ERISA or VCOC provisions, or (xiv) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge or impose any new prepayment fee, premium or yield maintenance charge; provided, however, after the later of (A) the expiration of the applicable Monetary Cure-Period or Non-Monetary Cure Period with respect to the default referenced in the related Senior Loan Default Notice and (B) the date that is thirty (30) days after Mezzanine Lender has been given notice of a Purchase Option Event, Senior Lender shall not be obligated to obtain the consent of Mezzanine Lender to a Senior Loan Modification in the case of a work-out or other surrender, compromise, release, renewal, or indulgence relating to a Continuing Senior Loan Event of Default, except that under no conditions shall modifications as described in clause (i) (with respect to increase in principal amount only), clause (iii) (with respect to shortening maturity only), clause (v) (to the extent such modification would limit or prohibit the exercise of remedies and realization upon the Equity Collateral by Mezzanine Lender or Loan Pledgee in accordance with the terms herein or cause such exercise to constitute an Event of Default) or clause (xiv) be made without the written consent of Mezzanine Lender; and provided, further, that notwithstanding anything to the contrary above, during the continuance of a default that is caused by a Proceeding of Borrower or any other applicable Borrower Party, after the later of (X) the expiration of the applicable Non-Monetary Cure Period (and provided a Continuing Senior Loan Event of Default exists), and (Y) the date that is thirty (30) days after Mezzanine Lender has been given notice of a Purchase Option Event, Senior Lender shall not be obligated to obtain the consent of Mezzanine Lender to a Senior Loan Modification in the case of any proposed plan or reorganization including Borrower or such other Borrower Party under such Proceeding. In addition and notwithstanding the foregoing provisions of this Section 8, any amounts funded by Senior Lender under the Senior Loan Documents as a result of (A) the making of any Protective Advances or other advances by Senior Lender expressly permitted pursuant to the terms of the Senior Loan Documents as they are in effect on the date hereof or modified in accordance with this Agreement, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 8(a). Notwithstanding the foregoing, if Mezzanine Lender has cured or is in the process of curing any Event of Default with respect to the Senior Loan (or if such Event of Default is not capable of being cured, if such Event of Default will not materially impair the use, value, or operation of the Premises or the cash flow from the Premises, and if Mezzanine Lender is diligently pursuing its remedies to acquire the Equity Collateral) or Mezzanine Lender has exercised its right to purchase the Senior Loan pursuant to Section 14 hereof, Senior Lender will not take any actions set forth in clauses (i) through (xiv) above without the prior written consent of Mezzanine Lender. In the event that the Mezzanine Loan Documents require that the consent of Mezzanine Lender be obtained in connection with any amendment, deferral, extension, modification, increase, renewal,

replacement, consolidation, supplement or waiver to the Senior Loan Documents which Senior Lender is permitted to enter into or grant under this Agreement without the consent of Mezzanine Lender, then, the same shall not be deemed a violation of the Mezzanine Loan Documents or cause liability under any guaranty given in connection with the Mezzanine Loan, and Mezzanine Lender shall be deemed to have consented thereto and shall, notwithstanding anything to the contrary contained in the Mezzanine Loan Agreement or other Mezzanine Loan Documents, consent to same for the benefit of Mezzanine Borrower and Borrower and shall promptly, upon written request of Senior Lender, notify Mezzanine Borrower and Borrower in writing that Mezzanine Lender consents to such amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver to the Senior Loan Documents, as applicable.

(b) Mezzanine Lender shall have the right without the consent of Senior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a “**Mezzanine Loan Modification**”) of the Mezzanine Loan or the Mezzanine Loan Documents; provided that no such Mezzanine Loan Modification shall (i) increase the interest rate or principal amount of the Mezzanine Loan, (ii) increase in any other material respect any monetary obligations of Mezzanine Borrower under the Mezzanine Loan Documents, including, without limitation, any obligation to pay any additional fees on the Mezzanine Loan (other than attorney’s fees and expenses), increase the amount of principal payments or modify the amortization required on the Mezzanine Loan in any manner which would increase principal payments due under the Mezzanine Loan, (iii) shorten the scheduled maturity date of the Mezzanine Loan, (iv) convert or exchange the Mezzanine Loan into or for any other indebtedness or subordinate any of the Mezzanine Loan to any indebtedness of Mezzanine Borrower, (v) amend or modify the provisions limiting transfers of interests in the Mezzanine Borrower or the Equity Collateral, (vi) cross default the Mezzanine Loan with any other indebtedness, (vii) provide for any contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises (or other similar equity participation) or require a pledge of any direct or indirect equity interest in Mezzanine Borrower, (viii) impose any financial covenants on Mezzanine Borrower not in the Mezzanine Loan Documents on the date hereof or make materially more restrictive any financial covenants of Mezzanine Borrower in the Mezzanine Loan Documents as of the date hereof, or (ix) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge or impose any new prepayment fee, premium or yield maintenance charge; provided, however, Mezzanine Lender shall not be obligated to obtain the consent of Senior Lender to a Mezzanine Loan Modification in the case of a work-out or other surrender, compromise, release, renewal, or indulgence relating to an Event of Default with respect to the Mezzanine Loan, except that under no conditions shall modifications as described in clause (i) (with respect to increase in principal amount only), clause (ii), clause (iii) (with respect to shortening the maturity only), clause (iv), clause (vi), clause (vii), or clause (ix) be made without the written consent of Senior Lender; provided further, however, (A) with respect to clause (iv) above, if an Event of Default exists under the Mezzanine Loan, the entire Mezzanine Loan may be converted into a preferred equity investment in Mezzanine Borrower without the Senior Lender’s consent if the Conversion Conditions have been satisfied and Mezzanine Lender shall have first provided Senior Lender at least twenty (20) Business Days prior to the date of such conversion a certification that such conversion will be made in accordance with this Agreement and shall provide drafts of all documents to be entered into in connection with

such conversion and evidence reasonably acceptable to Senior Lender that Mezzanine Lender has complied with the Conversion Conditions, and (B) with respect to clause (v), if the Kicker Conditions have been satisfied, such modifications in clause (vii), as applicable, may be made without the Senior Lender's consent. In addition and notwithstanding the foregoing provisions of this Section 8(b), (A) any amounts funded by Mezzanine Lender under the Mezzanine Loan Documents, and any increase of principal as a result of (1) the making of any Protective Advances or other advances or reallocations of principal by Mezzanine Lender expressly permitted pursuant to the terms of the Mezzanine Loan Documents as they are in effect on the date hereof, or (2) interest accruals or accretions and any compounding thereof (including default interest), (B) any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver given or made in connection with the guaranty of recourse obligations or other guaranty given in connection with the Mezzanine Loan (provided the obligations of any guarantors that are also guarantors in respect of the Senior Loan shall not be materially increased without Senior Lender's consent) or (C) any amendment or modification which has the effect of granting additional collateral (that does not constitute collateral for the Senior Loan on the date hereof) to Mezzanine Lender as additional security for the Mezzanine Loan, shall not be deemed to contravene this Section 8(b). In the event that the Senior Loan Documents require that the consent of Senior Lender be obtained in connection with any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver to the Mezzanine Loan Documents which Mezzanine Lender is permitted to enter into or grant under this Agreement without the consent of Senior Lender, then, the same shall not be deemed a violation of the Senior Loan Documents or cause liability under any guaranty given in connection with the Senior Loan, and Senior Lender shall be deemed to have consented thereto and shall, notwithstanding anything to the contrary contained in the Senior Loan Agreement or other Senior Loan Documents, consent to same for the benefit of Borrower and Mezzanine Borrower and shall promptly, upon written request of Mezzanine Lender, notify Borrower and Mezzanine Borrower in writing that Senior Lender consents to such amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver to the Mezzanine Loan Documents, as applicable.

(c) Senior Lender shall deliver to Mezzanine Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Senior Lender) within a reasonable time after any of such applicable instruments have been executed by Senior Lender.

(d) Mezzanine Lender shall deliver to Senior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Mezzanine Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Mezzanine Lender) within a reasonable time after any of such applicable instruments have been executed by Mezzanine Lender.

Section 9. Subordination of Mezzanine Loan and Mezzanine Loan Documents.

(a) Mezzanine Lender hereby subordinates and makes junior the Mezzanine Loan, the Mezzanine Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (i) the Senior Loan, (ii) the liens and security interests created by the Senior Loan Documents and (iii) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents, and no amendments or modifications to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this Section 9(a).

(b) Except with respect to the Separate Collateral that is not Equity Collateral, every document and instrument included within the Mezzanine Loan Documents shall be subject and subordinate to each and every document and instrument included within the Senior Loan Documents and all extensions, modifications, consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents.

(c) This Agreement shall not be construed as subordinating and shall not subordinate or impair Mezzanine Lender's first lien priority right, estate and interest in and to the Separate Collateral and Senior Lender hereby acknowledges and agrees that (i) Senior Lender does not have and shall not hereafter acquire, any lien on, or any other interest whatsoever in, the Separate Collateral, or any part thereof, and that the exercise of remedies and realization upon the Separate Collateral by Mezzanine Lender or a Loan Pledgee in accordance with the terms and provisions of this Agreement shall not constitute a default or an Event of Default under the Senior Loan Documents or this Agreement; (ii) no property of Mezzanine Borrower, including, without limitation, the Separate Collateral, is collateral for the Senior Loan (other than Mezzanine Borrower's indirect interest in the Premises); and (iii) Senior Lender is not a creditor of Mezzanine Borrower.

Section 10. Payment Subordination.

(a) Except (i) as otherwise expressly provided in this Agreement and (ii) in connection with the exercise by Mezzanine Lender of its rights and remedies with respect to the Separate Collateral and the application of the proceeds therefrom in accordance with the terms of this Agreement or the receipt of payments permitted pursuant to Section 10(b) herein, all of Mezzanine Lender's rights to payment of the Mezzanine Loan and the obligations evidenced by the Mezzanine Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower of the Senior Loan and the obligations secured by the Senior Loan Documents, and during the continuance of a Continuing Senior Loan Event of Default under the Senior Loan Documents, Mezzanine Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise, but excluding proceeds of Separate Collateral (other than Prohibited Equity Collateral), which proceeds may be retained by Mezzanine Lender) from Borrower and/or from the Premises prior to the date that all obligations of Borrower to Senior Lender under the Senior Loan Documents are paid. If a Proceeding against Borrower shall have occurred and not been dismissed or a Continuing Senior Loan Event of Default shall have occurred and be continuing, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender under the Senior Loan Documents before Mezzanine Lender is entitled to receive any payment on account of the Mezzanine Loan (other than with respect to payments on and proceeds from Separate Collateral, including the proceeds of enforcement, sale

or liquidation of or from (other than Prohibited Equity Collateral) which may be retained by Mezzanine Lender). All payments or distributions upon or with respect to the Mezzanine Loan which are received by Mezzanine Lender contrary to the provisions of this Agreement shall be received and held in trust by Mezzanine Lender for the benefit of Senior Lender and shall be paid over to Senior Lender in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held, or realized upon, as collateral (in the case of non-cash property or securities) for, the payment or performance of the Senior Loan in accordance with the terms of the Senior Loan Documents. Nothing contained herein shall prohibit Mezzanine Lender from making Protective Advances (and adding the amount thereof to the principal balance of the Mezzanine Loan) notwithstanding the existence of an Event of Default under the Senior Loan at such time.

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, Section 10(a) above; provided that no Continuing Senior Loan Event of Default shall then exist under the Senior Loan Documents, Mezzanine Lender may (1) accept payments (both current and delinquent) of any amounts due and payable from time to time which Mezzanine Borrower is obligated to pay Mezzanine Lender in accordance with the terms and conditions of the Mezzanine Loan Documents, including, without limitation, payments received as disbursements from Senior Lender pursuant to the Senior Loan Documents (which payments shall not constitute collateral for the Senior Loan nor be held in trust for Senior Lender), and/or (2) regardless of whether an Event of Default under the Senior Loan Documents exists, accept any amounts in respect to the Separate Collateral which is not Equity Collateral provided such acceptance does not cause a breach of the Senior Loan Documents and, in any case but subject to Section 6(b) above, Mezzanine Lender shall have no obligation to pay over to Senior Lender any such amounts under clauses (1) or (2) above). Subject to Sections 6(b) and 10(d) hereof, and provided that no Continuing Senior Loan Event of Default shall then exist under the Senior Loan Documents, nothing herein shall (A) prohibit Mezzanine Borrower from making payments from its own funds and from funds of any Affiliate (other than Borrower) contributed to Mezzanine Borrower (and not revenue derived from the Premises, insurance, condemnation proceeds, reserve/escrow amounts or the other collateral for the Senior Loan except to the extent the same was distributed or dividended to Mezzanine Borrower or Affiliate thereof (other than a distribution or dividend in violation of applicable terms and conditions of the Senior Loan Documents)) or (B) prohibit Mezzanine Lender from accepting and retaining any such payment.

(c) Mezzanine Lender may take any Equity Collateral Enforcement Action which is permitted under Section 6 herein or exercise any of its rights and remedies with respect to the Separate Collateral and retain any proceeds realized therefrom without the consent of Senior Lender; provided, however, (i) Mezzanine Lender shall, prior to commencing any Equity Collateral Enforcement Action, give Senior Lender written notice of the default which would permit Mezzanine Lender to commence such Equity Collateral Enforcement Action, and (ii) Mezzanine Lender shall provide Senior Lender with copies of any and all material notices, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Equity Collateral Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Equity Collateral Enforcement Action.

(d) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or

any portion of the Premises, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the “**Award**”). If the amount of the Award is in excess of all amounts owed to Senior Lender under the Senior Loan Documents, however, and either the Senior Loan has been paid in full or Borrower is entitled to a remittance of same under the Senior Loan Documents other than to restore the Premises, such excess Award or portion to be so remitted to Borrower shall, to the extent permitted in the Senior Loan Documents, be paid to or at the direction of Mezzanine Lender, unless other Persons have claimed the right to such awards or proceeds, in which case Senior Lender shall only be required to provide notice to Mezzanine Lender of such excess Award and of any other claims thereto. In the event of any competing claims for any such excess Award, Senior Lender shall (i) continue to hold such excess Award until Senior Lender receives an agreement signed by all Persons making a claim to the excess Award or a final order of a court of competent jurisdiction directing Senior Lender as to how and to which Person(s) the excess Award is to be distributed, and/or (ii) interplead the excess Award in accordance with the laws of the state in which the Premises is located and Senior Lender will be released from all liability in connection therewith. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Award from any such event to the Borrower if and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the Premises in accordance with the terms and provisions of the Senior Loan Documents. Any portion of the Award made available to the Borrower for the repair or restoration of the Premises shall not be subject to attachment by Mezzanine Lender, but this sentence is not intended to otherwise affect the lien, if any, that Mezzanine Lender may have on any proceeds distributed to Mezzanine Borrower in accordance herewith. Senior Lender shall promptly notify Mezzanine Lender of any requests by Borrower for a release of any portion of an Award, and (to the extent permitted by the Senior Loan Documents) provide Mezzanine Lender with any documentation delivered by Borrower to Senior Lender with respect to any such request (provided that in no event shall failure by Senior Lender to provide such notice or documentation to Mezzanine Lender constitute a default hereunder, subject Senior Lender to any liability or otherwise prejudice Senior Lender in any manner).

(e) With respect to any insurance policies (collectively, the “**Policies**”) for the Premises for which Mezzanine Lender and/or its Affiliate are identified as “named insureds” or “additional insureds”, until such time as the Senior Loan has been paid in full, Mezzanine Lender acknowledges and agrees that neither Mezzanine Lender nor any of its Affiliates shall have any right whatsoever to (i) contest or challenge (in their capacity as named insureds) any such settlement or adjustment approved by Senior Lender, (ii) disapprove any settlement or adjustment of any claim or any distribution of proceeds under the Policies approved by Senior Lender, or (iii) be issued checks, drafts or wires (jointly or otherwise) representing proceeds of the Policies. Nothing contained in this subparagraph (e) is meant to limit any rights that Mezzanine Lender has under the Mezzanine Loan Documents to approve of any action taken by the Mezzanine Borrower.

Section 11. Rights of Subrogation; Bankruptcy.

(a) Each of Senior Lender and Mezzanine Lender hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the Senior Loan Documents or the Mezzanine Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of Mezzanine

Lender and Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, Mezzanine Borrower, the condition of the Premises and all other collateral and other circumstances and, except as required by this Agreement, neither Senior Lender nor Mezzanine Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. Mezzanine Lender agrees that Senior Lender owes no fiduciary duty to Mezzanine Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Mezzanine Lender agrees not to assert any such claim. Senior Lender agrees that Mezzanine Lender owes no fiduciary duty to Senior Lender in connection with the administration of the Mezzanine Loan and the Mezzanine Loan Documents and Senior Lender agrees not to assert any such claim.

(b) No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by Mezzanine Lender shall entitle Mezzanine Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan Liabilities, and Mezzanine Lender agrees that, prior to the satisfaction of all Senior Loan Liabilities it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Premises or any other collateral securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

(c) Subject to Section 31 of this Agreement, the provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors or other similar law (a “**Proceeding**”). For as long as the Senior Loan shall remain outstanding, Mezzanine Lender or New Equity Owner shall not, and shall not solicit any person or entity to, and shall not direct or cause Mezzanine Borrower to solicit, direct or cause either the Borrower or any entity which Controls (directly or indirectly) Borrower (the “**Borrower Group**”) to: (i) commence any Proceeding; (ii) institute Proceedings to have Borrower adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution any Proceedings against Borrower; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower, the Premises (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower; (vii) seek to consolidate the Premises or any other assets of the Borrower with the assets of the Mezzanine Borrower or any Person in any Proceeding; or (viii) take any action in furtherance of any of the foregoing.

(d) If Mezzanine Lender is deemed to be a creditor of Borrower in any Proceeding, (i) Mezzanine Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, objection, notice or application or take any other action in any Proceeding by or against Borrower without the prior consent of Senior Lender, except to the extent necessary to preserve or realize upon Mezzanine Lender’s interest in the Equity Collateral, (ii) Senior Lender may vote in any such Proceedings any and all claims of Mezzanine Lender, and Mezzanine Lender hereby appoints Senior Lender as its agent, and grants to Senior Lender an

irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to Mezzanine Lender in connection with any Proceeding, including without limitation, the right to file and/or prosecute any claims, to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code; provided, however, with respect to any proposed plan of reorganization in respect of which creditors are voting, Senior Lender may vote on behalf of Mezzanine Lender only if the proposed plan would result in Senior Lender being “impaired” (as such term is defined in the United States Bankruptcy Code), and (iii) Mezzanine Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises or other Senior Loan collateral submitted by Senior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Senior Lender’s enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code). Senior Lender shall not have any rights under this clause (d) if Senior Lender is a Broad Affiliate of Borrower or Mezzanine Borrower.

Section 12. Rights of Cure.

(a) Prior to Senior Lender commencing any Enforcement Action by reason of an Event of Default under the Senior Loan Documents, Senior Lender shall provide written notice of the default which would permit Senior Lender to commence such Enforcement Action to Mezzanine Lender and any Loan Pledgee entitled to notice thereof pursuant to Section 16 herein, whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a “**Senior Loan Default Notice**”). In addition, Senior Lender shall use commercially reasonable efforts to send Mezzanine Lender notice of any Event of Default under the Senior Loan Documents in connection with which Senior Lender intends to take any remedial action under the Senior Loan Documents, provided, however, that the failure of Senior Lender to send any such notice shall not be a violation of this Agreement, shall not affect any of Senior Lender’s or Mezzanine Lender’s rights hereunder in any manner, and shall not affect any of Senior Lender’s rights with respect to the Senior Loan Documents or prejudice Senior Lender in any manner. In the event Senior Lender has delivered a Senior Loan Default Notice that has not been cured by Mezzanine Lender pursuant to this Section 12, Senior Lender shall use commercially reasonable efforts to provide Mezzanine Lender with copies of any and all material notices relating to such Event of Default, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Enforcement Action and otherwise keep Mezzanine Lender reasonably apprised as to the current status of any Enforcement Action. Except in connection with Borrower’s failure to repay the Senior Loan in full on the maturity date thereof (in which event, this Section 12 shall not apply), Senior Lender shall permit Mezzanine Lender an opportunity to cure such default in accordance with the provisions of this Section 12. In the event Borrower fails to repay the Senior Loan in full on the maturity date thereof, Mezzanine Lender shall have the right to purchase the Senior Loan pursuant to the terms, and subject to the conditions, provided in Section 14 herein. Prior to or concurrently with undertaking any curative action with respect to the Senior Loan, Mezzanine Lender shall provide Senior Lender with written notice thereof.

(b) If the default identified in a Senior Loan Default Notice is a monetary default relating to a liquidated sum of money, Mezzanine Lender shall have until ten (10) Business Days after the later of (i) the receipt from Senior Lender of the Senior Loan Default Notice and (ii) the expiration of Borrower’s cure period, if any (the “**Monetary Cure Period**”) to cure such monetary

default. In the event Mezzanine Lender elects to cure any such monetary default, Mezzanine Lender shall (x) reimburse Senior Lender for any interest charged by Senior Lender on any required (pursuant to an applicable pooling and servicing agreement in connection with a Securitization) advances on the Senior Loan (including Protective Advances) for amounts which Borrower would be obligated to pay under the Senior Loan Documents together with payment of all other amounts then due under the Senior Loan Documents (excluding any late charges or fees or default interest) and (y) for so long as Mezzanine Lender is curing such monetary default, with respect to any liquidated sum of money that becomes first due and payable pursuant to the Senior Loan Documents after the delivery of a Senior Loan Default Notice, Mezzanine Lender shall pay or cause to be paid such sum, in the amount notified to Mezzanine Lender by Senior Lender, not more than ten (10) Business Days after receipt of such notice from Senior Lender, in accordance with the Senior Loan Documents, subject only to any grace period with respect to such sum provided in the Senior Loan Documents and without the additional grace period applicable to Mezzanine Lender with respect to the initial monetary default pursuant to this Section 12(b), but subject to any notice requirements under the Senior Loan Documents. Mezzanine Lender shall not have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan for a period of more than six (6) consecutive months in any single year or more than ten (10) months, (whether consecutive or not) in the aggregate during the term of the Senior Loan unless Mezzanine Lender has commenced and is continuing to diligently pursue its rights against the Equity Collateral. If the default referenced in a Senior Loan Default Notice has been cured such that there is no longer an Event of Default under the Senior Loan Documents, Mezzanine Lender shall have the same Monetary Cure Period with respect to any future Senior Loan Default Notice.

(c) If the default identified in the Senior Loan Default Notice is of a non-monetary nature Mezzanine Lender shall have until thirty (30) Business Days after the later of (i) Mezzanine Lender's receipt of the Senior Loan Default Notice from Senior Lender and (ii) the expiration of any applicable cure period provided to Borrower under the Senior Loan Documents (the "**Non-Monetary Cure Period**") to cure such non-monetary default. Notwithstanding the applicable Non-Monetary Cure Period with respect to Mezzanine Lender, if (I) a non-monetary default identified in a Senior Loan Default Notice is susceptible of cure but cannot reasonably be cured within such applicable Non-Monetary Cure Period or, if not susceptible of cure within the applicable Non-Monetary Cure Period, Mezzanine Lender is diligently pursuing foreclosure of its Equity Collateral and (II) curative action, which may include, in the case of a non-monetary default that is not susceptible of cure during the applicable Non-Monetary Cure Period, an Equity Collateral Enforcement Action, was commenced during the initial thirty (30) Business Day period and is thereafter being diligently pursued by Mezzanine Lender, Mezzanine Lender shall be given such additional period of time as is reasonably necessary for Mezzanine Lender in the exercise of due diligence to cure such non-monetary default for so long as (W) Borrower or Mezzanine Lender makes or causes to be made timely payment of Borrower's regularly scheduled monthly principal and/or interest payments under the Senior Loan and any other amounts due under the Senior Loan Documents (other than any late charges or fees or default interest accruing other than by reason of any failure to make such regularly scheduled monthly principal and/or interest payments in a timely manner), (X) such additional period of time does not exceed ninety (90) days, unless such non-monetary default is of a nature that cannot be cured within such ninety (90) days, in which case, Mezzanine Lender shall have such additional time as is reasonably necessary to cure such non-monetary default; provided that Mezzanine Lender is continuously and diligently pursuing a

cure of such non-monetary default, (Y) such default is not caused by a Proceeding of Borrower, any Borrower Party or any member of the Borrower Group, and (Z) during any extension of the initial Non-Monetary Cure Period, there is no material impairment to the value, use or operation of the Premises taken as a whole as reasonably determined by Senior Lender in good faith as a result of such non-monetary default. The Non-Monetary Cure Period and any additional cure period granted hereunder to Mezzanine Lender shall automatically terminate upon (x) the commencement of a voluntary Proceeding involving Borrower, any Borrower Party or any member of the Borrower Group, (y) a consent to an involuntary Proceeding by Borrower, any Borrower Party or any member of the Borrower Group, or (z) the failure of Borrower, any Borrower Party or any member of the Borrower Group to have an involuntary Proceeding against it discharged, stayed or dismissed within ninety (90) days of filing thereof. With respect to any Senior Loan Event of Default referenced in subsection (b) above and in this subsection (c), in the event that (i) Mezzanine Lender had the right hereunder to cure such Senior Loan Event of Default, (ii) if, after receipt of a Senior Loan Default Notice, Mezzanine Lender informed Senior Lender that Mezzanine Lender intends to cure such Senior Loan Event of Default and Mezzanine Lender commences to do so pursuant to the terms and conditions hereof and (iii) during the cure period granted to Mezzanine Lender hereunder, Borrower cures the applicable Senior Loan Event of Default pursuant to the terms and conditions of the Senior Loan Documents, Senior Lender will accept such cure from Borrower.

(d) So long as no Continuing Senior Loan Event of Default shall have occurred and be continuing under the Senior Loan Documents, all funds held and applied pursuant to the Senior Loan Documents, shall continue to be applied pursuant thereto and shall not be applied by Senior Lender to prepay the outstanding principal balance of the Senior Loan other than the application of such funds to the amortization of the Senior Loan as contemplated by the terms and provisions of the Senior Loan Documents and this Agreement.

(e) (i) Mezzanine Lender shall give Senior Lender notice of any Event of Default under the Mezzanine Loan Documents (to the extent delivered to Mezzanine Borrower), acceleration of the Mezzanine Loan and/or the commencement of any Equity Collateral Enforcement Action under the Mezzanine Loan Documents and, simultaneously with giving such notices to Mezzanine Borrower, copies of notices given to Mezzanine Borrower of events that with the passage of time and failure to cure, would result in the occurrence of a “Default” or “Event of Default” under the Mezzanine Loan Documents, (ii) Senior Lender shall give Mezzanine Lender written notice of any Event of Default under the Senior Loan Documents (to the extent delivered to Borrower), acceleration of the Senior Loan, transfer of the Senior Loan to “special servicing” and/or the commencement of an Enforcement Action under the Senior Loan Documents and, simultaneously with giving such notices to Borrower, copies of notices given to Borrower of events that with the passage of time and failure to cure, would result in the occurrence of a “Default” or “Event of Default” under the Senior Loan Documents.

Section 13. No Actions; Restrictive Provisions.

(a) Senior Lender consents to Mezzanine Lender’s right, pursuant to the Mezzanine Loan Documents, under certain circumstances, to cause the termination of the Property Manager. In the event both Senior Lender and Mezzanine Lender shall have such rights at any time, and Senior Lender has not already exercised such rights, Mezzanine Lender may exercise such rights

so long as an Event of Default under the Senior Loan is not then occurring (which is not in the process of being cured by Mezzanine Lender in accordance with this Agreement); provided that such exercise may be superseded by any subsequent exercise of such rights (with respect to such replacement Property Manager) by Senior Lender pursuant to the Senior Loan Documents.

(b) Upon the occurrence of any event which would entitle Mezzanine Lender to cause the termination of the Property Manager pursuant to the Mezzanine Loan Documents, Mezzanine Lender shall have the right to select, or cause the selection, of a replacement property manager (including any asset manager) or leasing agent for the Premises, which replacement manager, asset manager and/or leasing agent shall either (a) be subject to Senior Lender's reasonable approval and, if any Certificates are then outstanding, be subject to a Rating Agency Confirmation or (b) be a Qualified Manager.

(c) Notwithstanding anything in this Section 13 to the contrary, if an Event of Default under the Senior Loan then exists (which is not in the process of being cured by Mezzanine Lender in accordance with this Agreement), Senior Lender shall have the sole right to select any replacement manager, asset manager and/or leasing agent, whether or not a new manager or agent was retained by Mezzanine Lender; provided, however, if Senior Lender does not select a replacement manager, asset manager and/or leasing agent within thirty (30) days of the commencement of the exercise of such right by Senior Lender under the Senior Loan Documents, then Mezzanine Lender shall have the right to select a replacement manager, asset manager and/or leasing agent; provided such Person is a Qualified Manager; and provided further that such exercise may be superseded by any subsequent exercise of such rights (with respect to such replacement manager, asset manager and/or leasing agent) by Senior Lender pursuant to the Senior Loan Documents. Mezzanine Lender or New Equity Owner, as applicable, shall use commercially reasonable efforts to cause any new Property Manager selected by them to execute a subordination of management agreement in favor of Senior Lender, in substantially the same form and substance as the existing subordination of management agreement.

Section 14. Right to Purchase Senior Loan.

(a) If any Enforcement Action has been commenced under the Senior Loan Documents, a Proceeding has been commenced by or against Borrower or any member of the Borrower Group, or the Senior Loan is a "specially serviced mortgage loan" under the applicable pooling and servicing agreement as the result of a monetary or material non-monetary Event of Default under the Senior Loan (each of the foregoing, a "**Purchase Option Event**"), Senior Lender shall provide prompt written notice (the "**Senior Notice of Option**") of the same to Mezzanine Lender (provided that, in no event shall Senior Lender be obligated to send more than one (1) Senior Notice of Option in respect of any single event or occurrence as to which such Proceeding, Enforcement Action and/or the Senior Loan becoming a "specially serviced mortgage loan" relate), and upon ten (10) Business Days' prior written notice to Senior Lender (the "**Purchase Notice**") Mezzanine Lender shall have the right to purchase for cash, in whole but not in part, the Senior Loan for a price equal to the sum of (without duplication) the outstanding principal balance thereof, together with all accrued interest, and other amounts due thereon (including, without limitation, (i) any unreimbursed required (pursuant to an applicable pooling and servicing agreement in connection with a Securitization) advances (including Protective Advances) made by Senior Lender or any servicer or trustee for amounts which Borrower is obligated to pay under

the Senior Loan Documents, (ii) post-petition interest, (iii) any interest charged by Senior Lender or any servicer or trustee on any required (pursuant to an applicable pooling and servicing agreement in connection with a Securitization) advances, (iv) any workout fee, special servicing fee or liquidation fee payable to the special servicer pursuant to a pooling and servicing agreement in connection with a Securitization, but excluding any workout fee or liquidation fees if the Senior Loan is purchased within ninety (90) days of the date that notice of the Purchase Option Event was given to Mezzanine Lender, and (v) all reasonable, out-of-pocket costs and expenses (including reasonable legal fees and expenses) actually incurred by Senior Lender in enforcing the terms of the Senior Loan Documents, but excluding any yield maintenance premiums, prepayment fees or premiums that would be due if Borrower was prepaying the Senior Loan at the time of such purchase in violation of the prohibition against voluntary prepayment, any exit fees, any liquidated damage amount, any spread maintenance charges, any late charges or any default interest (collectively, the “**Loan Purchase Price**”). Notwithstanding the foregoing but subject to the terms of the last sentence of this Section 14(a), the failure of Senior Lender to provide notice to Mezzanine Lender of the occurrence of a Purchase Option Event shall have no adverse effect on Senior Lender other than the resulting extension of the time in which the Purchase Notice may be given. Concurrently with payment to Senior Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered to Mezzanine Lender all Senior Loan Documents held by or on behalf of Senior Lender and will execute in favor of Mezzanine Lender or its designee assignment documentation, in form and substance reasonably acceptable to Mezzanine Lender, at the sole cost and expense of Mezzanine Lender to assign the Senior Loan and its rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the Senior Loan, power and authority to enter into the applicable assignment documentation and as to Senior Lender’s ownership and not having previously assigned, transferred, participated or encumbered its rights in the Senior Loan as of the consummation of the assignment of the Senior Loan). Notwithstanding anything herein to the contrary, but subject to the succeeding sentence, Mezzanine Lender may extend the ten (10) Business Day period following delivery of its Purchase Election Notice during which Mezzanine Lender is required to consummate such purchase for an additional thirty (30) days upon payment to Senior Lender of a non-refundable (unless the Purchase Option Event ceases to exist during such 30-day period) cash deposit in an amount equal to five percent (5%) of the Loan Purchase Price. The right of Mezzanine Lender to purchase the Senior Loan shall automatically terminate (x) to the extent such right arose with respect to a specific Purchase Option Event, if such Purchase Option Event ceases to exist, or (y) upon a Transfer of all of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure; it being acknowledged and agreed that (i) Mezzanine Lender shall be entitled to bid at foreclosure as permitted by applicable law and (ii) in no event shall Mezzanine Lender have less than thirty (30) days to deliver a Purchase Notice to Senior Lender following receipt of notice from Senior Lender of the occurrence of a Purchase Option Event, except pursuant to the foregoing clause (x) above.

(b) Notwithstanding anything to the contrary contained herein, in the event that Borrower tenders a deed in lieu of foreclosure to Senior Lender or its nominee, Senior Lender shall give written notice of such tender to Mezzanine Lender and Mezzanine Lender shall have thirty (30) days after its receipt of such written notice to exercise its purchase option and to consummate the purchase of the Senior Loan pursuant to the terms and provisions of Section 14(a) above (but expressly excluding the penultimate sentence and clause (y) of the last sentence thereof). Senior

Lender and any nominee of Senior Lender shall be prohibited from accepting any deed in lieu of foreclosure during such thirty (30) day time period.

(c) If an Event of Default shall occur under the Senior Loan, then Mezzanine Lender, at its option, may deliver to Senior Lender a notice (a “**Forbearance Period Notice**”) which includes (i) a statement of Mezzanine Lender’s intent to pursue an Equity Collateral Enforcement Action and (ii) a request that Senior Lender forbear from completing a foreclosure action against the Premises pursuant to the terms and conditions of this Section 14(c) and if Mezzanine Lender delivers such a notice, so long as (x) there are no uncured defaults under the Senior Loan with respect to the payment of non-default rate monthly debt service to Senior Lender, (y) there is no Proceeding of Borrower, any Borrower Party or any member of the Borrower Group, and (z) there is no material impairment to the value, use or operation of the Premises taken as a whole as reasonably determined by Senior Lender in good faith that would result from such Senior Foreclosure Forbearance Period (the events referred to in subsection (x), (y) and (z) above each referred to as a “**Senior Foreclosure Forbearance Period Termination Event**”). Senior Lender shall forbear from completing a foreclosure of the Senior Loan until the earlier of (i) completion of the Equity Collateral Enforcement Action and (ii) ninety (90) days from the earlier of (A) receipt of such Forbearance Period Notice and (B) the occurrence of an Event of Default under the Senior Loan (the “**Senior Foreclosure Forbearance Period**”). Such forbearance shall pertain solely to completing a foreclosure and, during the Senior Foreclosure Forbearance Period, Senior Lender shall be permitted to commence a judicial or non-judicial foreclosure proceeding, prosecute such foreclosure proceedings (short of completing the foreclosure) and prosecute any interim or provisional remedies as Senior Lender may elect, including equitable relief and appointment of a receiver. Upon the occurrence of any Senior Foreclosure Forbearance Period Termination Event, any Senior Foreclosure Forbearance Period shall terminate and Senior Lender shall thereafter not be restricted from completing a foreclosure of the Senior Loan.

(d) Mezzanine Lender covenants not to enter into any agreement with Borrower or Mezzanine Borrower or any respective Affiliate thereof to purchase the Senior Loan pursuant to this Section 14 or in connection with any refinancing of the Senior Loan in any manner designed to avoid or circumvent the provisions of the Senior Loan Documents relating to the payment of a prepayment fee or yield maintenance charge in connection with a prepayment of the Senior Loan.

(e) To the extent Senior Lender accepts a conveyance of the Premises in lieu of foreclosure in compliance with this Section 14, then (i) such Transfer shall not be deemed a violation of the Mezzanine Loan Documents, and (ii) Mezzanine Lender shall be deemed to have consented to such deed in lieu or consensual foreclosure (and, upon written request, shall provide its consent to such deed in lieu or other consensual foreclosure for the benefit of the Mezzanine Borrower and shall promptly notify Mezzanine Borrower in writing of the same), and (iii) such deed in lieu or consensual foreclosure shall not trigger liability under the Mezzanine Guaranty and, upon Senior Lender’s written request, Mezzanine Lender shall promptly notify the Mezzanine Borrower and the Mezzanine Guarantor in writing that such deed in lieu of foreclosure or other consensual foreclosure will not trigger liability under any guaranty provided with respect to the Mezzanine Loan.

Section 15. Additional Understandings. For as long as the Mezzanine Loan remains outstanding:

(a) Notices of Transfer: Consent. Senior Lender and Mezzanine Lender, as applicable, shall promptly notify Senior Lender or Mezzanine Lender, as applicable, if Borrower or Mezzanine Borrower seeks or requests from such Person a release of any lien arising pursuant to any of the Senior Loan Documents or Mezzanine Loan Documents, as applicable, or seeks or requests such Person's consent to, or take any action in connection with or in furtherance of, a Transfer of the Premises or any portion thereof, a Transfer of any interest in Borrower or Mezzanine Borrower, or a prepayment or refinancing of the Senior Loan. In connection with any sale of the Premises or any portion thereof or any sale of any interest in Borrower by Mezzanine Borrower after the occurrence of an Event of Default for its "fair market value," Senior Lender will cause all amounts in excess of amounts due on the Senior Loan to be applied toward amounts outstanding under the Mezzanine Loan. Senior Lender shall promptly notify Mezzanine Lender if Borrower seeks or requests a release of the lien of the Senior Loan from all or any portion of the Premises or seeks or requests Senior Lender's consent to, or take any action in connection with or in furtherance of, a sale or transfer of all or any material portion of the Premises or any part thereof, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or refinancing of the Senior Loan. In the event of a request by Borrower for Senior Lender's consent to either (i) the sale or transfer of all or any material portion of the Premises or (ii) the granting of a further mortgage, deed of trust or similar encumbrance against the Premises, Senior Lender shall, if Senior Lender has the right to consent, obtain the prior written consent of Mezzanine Lender prior to Senior Lender's granting of its consent or agreement thereto.

(b) Annual Budget. Mezzanine Lender shall have the right to approve the annual operating budget of Borrower in accordance with the terms of the Mezzanine Loan Documents. In the event Mezzanine Lender objects to any such proposed budget, Mezzanine Lender shall advise Senior Lender of such objections, along with its suggestions for changes, within ten (10) Business Days after its receipt of such budget in accordance with the Mezzanine Loan Documents. Senior Lender agrees to consult with Mezzanine Lender with respect to such objections and suggestions and with respect to any deviations, but such consultation shall not be binding on Senior Lender. Mezzanine Lender shall consent to any changes in the budget reasonably requested by Senior Lender. Notwithstanding anything to the contrary contained herein or in the Senior Loan Documents, Mezzanine Lender may require submission by Mezzanine Borrower of an annual budget to Mezzanine Lender for approval prior to Mezzanine Lender permitting Mezzanine Borrower to submit such annual budget to Senior Lender.

(c) Additional Mezzanine Loan. Notwithstanding anything to the contrary in this Agreement, in no event shall Senior Lender be entitled to create any new mezzanine loan or similar loan secured by ownership interests in Borrower without the written consent of Mezzanine Lender, to be granted or withheld in its sole discretion

(d) Cash Management. Senior Lender agrees to use commercially reasonable efforts to cause the Cash Management Bank (as defined under the Senior Loan Documents) to perform its obligations under the Senior Loan Cash Management Agreement, and hold and apply all funds required to be held and applied thereunder, in accordance with the terms and provisions of the Senior Loan Cash Management Agreement.

Section 16. Financing of Mezzanine Loan.

(a) Notwithstanding any other provision herein, Senior Lender consents to Mezzanine Lender's sale in connection with a repurchase agreement facility or pledge (each, a "**Pledge**") of the Mezzanine Loan and of the Separate Collateral to any Person which has extended a credit facility (including, without limitation, credit in the form of a repurchase agreement facility) to Mezzanine Lender that is not an Affiliated Lender and would otherwise be deemed to be a Qualified Transferee or a financial institution whose long-term unsecured debt is rated at least "A-" (or the equivalent) or better by each Rating Agency (a "**Loan Pledgee**"), on the terms and conditions set forth in this Section 16; provided, that a Loan Pledgee which is not a Qualified Transferee may not take title to the Equity Collateral without a Rating Agency Confirmation. Upon written notice by Mezzanine Lender to Senior Lender that the Pledge has been effected, Senior Lender agrees to acknowledge receipt of such notice and thereafter agrees: (a) to give Loan Pledgee written notice of any default by Mezzanine Lender under this Agreement of which default Senior Lender has actual knowledge; (b) to allow Loan Pledgee a period of ten (10) Business Days (in respect of a monetary default) and a period of thirty (30) days (in respect of a non-monetary default) to cure a default by Mezzanine Lender in respect of its obligations to Senior Lender hereunder, but Loan Pledgee shall not be obligated to cure any such default; (c) that no amendment, modification, waiver or termination of this Agreement shall be effective against Loan Pledgee without the written consent of Loan Pledgee, which consent shall not be unreasonably withheld; (d) that Senior Lender shall give to Loan Pledgee copies of any Senior Loan Default Notice simultaneously with the giving of same to Mezzanine Lender and accept any cure thereof by Loan Pledgee made in accordance with the provisions of Section 12 of this Agreement as if such cure were made by Mezzanine Lender; and (e) that, upon written notice (a "**Redirection Notice**") to Senior Lender by Loan Pledgee that Mezzanine Lender is in default, beyond applicable cure periods, under Mezzanine Lender's obligations to Loan Pledgee pursuant to the applicable credit agreement between Mezzanine Lender and Loan Pledgee (which notice need not be joined in or confirmed by Mezzanine Lender), and until such Redirection Notice is withdrawn or rescinded by Loan Pledgee, Senior Lender shall remit to Loan Pledgee and not to Mezzanine Lender, any payments that Senior Lender would otherwise be obligated to pay to Mezzanine Lender from time to time pursuant to this Agreement, any Mezzanine Loan Document or any other agreement between Senior Lender and Mezzanine Lender that relates to the Mezzanine Loan. Mezzanine Lender hereby unconditionally and absolutely releases Senior Lender from any liability to Mezzanine Lender on account of Senior Lender's compliance with any Redirection Notice reasonably believed by Senior Lender to have been delivered by Loan Pledgee. Loan Pledgee shall be permitted to fully exercise its rights and remedies against Mezzanine Lender, and realize on any and all collateral granted by Mezzanine Lender to Loan Pledgee (and accept an assignment in lieu of foreclosure as to such collateral), in accordance with applicable law. In such event, Senior Lender shall recognize Loan Pledgee (and any transferee which is also a Qualified Transferee at any foreclosure or similar sale held by Loan Pledgee or any transfer in lieu of such foreclosure), and its successors and assigns, as the successor to Mezzanine Lender's rights, remedies and obligations under this Agreement and the Mezzanine Loan Documents and any such Loan Pledgee or Qualified Transferee shall assume in writing the obligations of Mezzanine Lender hereunder accruing from and after such Transfer and agrees to be bound by the terms and provisions herein (it being agreed that, notwithstanding anything to the contrary contained herein, such Loan Pledgee shall not be required to so assume Mezzanine Lender's obligations hereunder prior to such realization on such collateral). The rights of Loan Pledgee under this Section 16 shall remain

effective unless and until Loan Pledgee shall have notified Senior Lender in writing that its interest in the Mezzanine Loan has terminated.

(b) Notwithstanding any provisions herein to the contrary, if a conduit (“**Conduit**”) which is not a Qualified Transferee provides financing to Mezzanine Lender then such Conduit will be a permitted “Loan Pledgee” despite the fact it is not a Qualified Transferee if the following conditions are satisfied:

(i) The loan (the “**Conduit Inventory Loan**”) made by the Conduit to Mezzanine Lender to finance the acquisition and holding of its interest in Mezzanine Lender’s Mezzanine Loan will require a third party (the “**Conduit Credit Enhancer**”) to provide credit enhancement;

(ii) the Conduit Credit Enhancer will be an Qualified Transferee;

(iii) Mezzanine Lender will pledge its interest in the Mezzanine Loan to the Conduit as collateral for the Conduit Inventory Loan;

(iv) the Conduit Credit Enhancer and the Conduit will agree that, if Mezzanine Lender defaults under the Conduit Inventory Loan, or if the Conduit is unable to refinance its outstanding commercial paper even if there is no default by Mezzanine Lender, the Conduit Credit Enhancer will purchase the Conduit Inventory Loan from the Conduit, and the Conduit will assign the pledge of Mezzanine Lender’s interest in the Mezzanine Loan to the Conduit Credit Enhancer; and

(v) unless the Conduit is in fact then a Qualified Transferee, the Conduit will not have any greater right to acquire the interests in the Mezzanine Loan pledged by Mezzanine Lender, by foreclosure or otherwise, than would any other purchaser that is not a Qualified Transferee at a foreclosure sale conducted by a Loan Pledgee.

Section 17. Obligations Hereunder Not Affected.

(a) All rights, interests, agreements and obligations of Senior Lender and Mezzanine Lender under this Agreement shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Senior Loan Documents or the Mezzanine Loan Documents or any other agreement or instrument relating thereto;

(ii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to or departure from any guaranty, for all or any portion of the Senior Loan or the Mezzanine Loan;

(iii) any manner of application of collateral, or proceeds thereof, to all or any portion of the Senior Loan or the Mezzanine Loan, or any manner of sale or other disposition of any collateral for all or any portion of the Senior Loan or the Mezzanine Loan or any other assets of Borrower or Mezzanine Borrower or any other Affiliates of Borrower;

(iv) any change, restructuring or termination of the corporate structure or existence of Borrower or Mezzanine Borrower or any other Affiliates of Borrower; or

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, Mezzanine Borrower or a subordinated creditor or a Senior Lender subject to the terms herein.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of the Senior Loan is rescinded or must otherwise be returned by Senior Lender or Mezzanine Lender upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

Section 18. Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by facsimile (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 18. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) three (3) days after the date mailed, (b) on the date of sending by facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To Mezzanine Lender:

Quadrant Mezz Fund, LP
8333 Douglas Avenue, Suite 1350
Dallas, Texas 75225
Attention: Matt Welsh
Email: mwelsh@quadrantcapital.com

With a copy to:

Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attention: Dan Hopper, Esq.
Email: dan.hopper@tklaw.com

To Senior Lender:

Grass River Real Estate Credit Partners Loan Funding, LLC
2977 McFarlane Road, Suite 300
Coconut Grove, Florida 33133
Attn.: Legal Dept.

Email: legal@grassriver.com

With a copy to:

Haynes and Boone, LLP
30 Rockefeller Plaza, 26th Floor
New York, New York 10112
Attention: Walter F. Schleimer, Esq. (ADF)
Email: Walter.Schleimer@haynesboone.com

Section 19. Estoppel.

(a) Mezzanine Lender shall, within ten (10) Business Days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Mezzanine Loan, the aggregate accrued and unpaid interest under the Mezzanine Loan, and stating whether to Mezzanine Lender's knowledge any default or Event of Default exists under the Mezzanine Loan.

(b) Senior Lender shall, within ten (10) Business Days following a request from Mezzanine Lender, provide Mezzanine Lender with a written statement setting forth the then current outstanding principal balance of the Senior Loan, the aggregate accrued and unpaid interest under the Senior Loan, and stating whether to Senior Lender's knowledge any default or Event of Default exists under the Senior Loan.

(c) Any statement provided pursuant to this Section 19 may be relied upon by any investor or participant in the Senior Loan or the Mezzanine Loan, or any purchaser of the Senior Loan or the Mezzanine Loan (or of any interest or a participation interest therein), but may not be relied upon by Borrower, Mezzanine Borrower or any guarantor with respect to the Senior Loan or the Mezzanine Loan

Section 20. Further Assurances. So long as all or any portion of the Senior Loan remains unpaid and the Senior Mortgage encumbers the Premises, Mezzanine Lender and Senior Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes herein.

Section 21. Consents to Jurisdiction. Each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of the United States District Court for the Southern District of New York, any court in the State of New York located in the borough of Manhattan in the city and county of New York, and any appellate court from any thereof, in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereunder or for recognition or enforcement of any judgment and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereunder may be heard or determined in such New York State court or, to the extent permitted by law, in such federal court.

Section 22. No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of this Agreement to inure to Borrower, Mezzanine Borrower or any other Person other than Loan Pledgees pursuant to Section 16. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought. If any Certificates are outstanding, this Agreement shall not be amended unless a Rating Agency Confirmation has been obtained with respect to such amendment.

Section 23. Successors and Assigns. This Agreement shall bind all successors and permitted assigns of Mezzanine Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Mezzanine Lender including any Loan Pledgee.

Section 24. Counterpart Originals. This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

Section 25. Legal Construction. In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

Section 26. No Waiver; Remedies. No failure on the part of Senior Lender or Mezzanine Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 27. No Joint Venture. Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

Section 28. Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

Section 29. Conflicts. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan Documents or the Mezzanine Loan Documents, the terms and conditions of this Agreement shall control.

Section 30. No Release. Nothing herein contained shall operate to release Borrower from (a) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (b) any liability of Borrower under the Senior Loan Documents or to release Mezzanine Borrower from (x) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Mezzanine Loan Documents or (y) any liability of Mezzanine Borrower under the Mezzanine Loan Documents.

Section 31. Continuing Agreement. This Agreement is a continuing agreement and shall remain in full force and effect until the earlier of (a) payment in full of the Senior Loan, (b) transfer of the Premises by foreclosure of the Senior Mortgage or the exercise of the power of sale contained therein or by deed-in-lieu of foreclosure, (c) transfer of title to Mezzanine Lender of the Equity Collateral in accordance with Section 6(a) hereof, (d) payment in full of the Mezzanine Loan or (e) the conversion of the Mezzanine Loan into a preferred equity investment pursuant to the Conversion Conditions; provided, however, any rights or remedies of either party hereto arising out of any breach of any provision herein occurring prior to such date of termination shall survive such termination.

Section 32. Severability. In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement. Furthermore, the parties shall in good faith endeavor to replace any provision held to be invalid or unenforceable with a valid and enforceable provision which most closely resembles, and which has the same economic effect as, the provision held to be invalid or unenforceable.

Section 33. Expenses.

(a) To the extent not paid by Borrower or out of or from any collateral securing the Senior Loan which is realized by Senior Lender, Mezzanine Lender agrees upon demand to pay to Senior Lender the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts or agents, which Senior Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Senior Lender against Mezzanine Lender hereunder to the extent that Senior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Mezzanine Lender to perform or observe any of the provisions herein.

(b) To the extent not paid by Mezzanine Borrower or out of or from any collateral securing the Mezzanine Loan which is realized by Mezzanine Lender, Senior Lender agrees upon demand to pay to Mezzanine Lender the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts or agents, which Mezzanine Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Mezzanine Lender against Senior Lender hereunder to the extent that Mezzanine Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Senior Lender to perform or observe any of the provisions herein.

Section 34. Injunction. Senior Lender and Mezzanine Lender each acknowledge (and waive any defense based on a claim) that monetary damages may not be an adequate remedy to redress a breach by the other hereunder and that a breach by either Senior Lender or Mezzanine Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Mezzanine Lender agree that upon a breach of this Agreement by the other, the remedies of

injunction, declaratory judgment and specific performance shall be available to such non-breaching party in addition to any remedies at law or hereunder.

Section 35. Mutual Disclaimer.

(a) Each of Senior Lender and Mezzanine Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Mezzanine Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Mezzanine Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Mezzanine Lender deem relevant. Each of Senior Lender and Mezzanine Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Mezzanine Loan or the Mezzanine Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties of the other contained herein. Each of Senior Lender and Mezzanine Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Mezzanine Lender have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of Senior Lender and Mezzanine Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Mezzanine Loan or the Premises (including, without limitation, the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Mezzanine Loan).

(b) Each of Senior Lender and Mezzanine Lender acknowledges that the Senior Loan, and the Senior Loan Documents, collectively, and the Mezzanine Loan and the Mezzanine Loan Documents, collectively, are distinct, separate transactions and loans, separate and apart from each other. Each of Senior Lender and Mezzanine Lender acknowledges that the other are acting as distinct separate lenders with distinct and separate loans, with various rights and remedies with respect to their respective collateral which are not in all respects aligned.

Section 36. Affiliated Lender. Mezzanine Lender hereby covenants and agrees that it shall not (1) Transfer any portion of the Mezzanine Loan to Borrower, Mezzanine Borrower or an Affiliated Lender or (2) permit a Transfer of the direct or indirect equity interests in Mezzanine Borrower pursuant to the terms of the Mezzanine Loan Documents which shall cause Mezzanine Lender to be an "Affiliated Lender" hereunder. In the event that Mezzanine Lender violates the foregoing provision, such Transfer of the Mezzanine Loan and/or Transfer of equity shall be null and void and of no further force and effect relative to Senior Lender, and the Affiliated Lender Conditions shall apply. For purposes of (1) above, Mezzanine Lender is entitled to exclusively rely on, without investigation, the affirmative representations of the proposed transferee that such Person is not, and after giving effect to the proposed Transfer, shall not be an Affiliated Lender (which such representations must be made for the benefit of Senior Lender and Mezzanine Lender).

Section 37. Waiver of Jury Trial. **SENIOR LENDER AND MEZZANINE LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE RELATING TO THE SENIOR LOAN, THE MEZZANINE LOAN OR THE PREMISES, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OR OMISSION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY ACTION BASED ON CONTRACT, ANY ALLEGED TORT OR OTHERWISE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR SENIOR LENDER AND MEZZANINE LENDER TO ENTER INTO THIS AGREEMENT.**

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

SENIOR LENDER:

**GRASS RIVER REAL ESTATE CREDIT
PARTNERS LOAN FUNDING, LLC,**
a Delaware limited liability company

By: 

Name: Toby Cobb

Title: Authorized Person

[Signatures continue on the following page.]

MEZZANINE LENDER:

QUADRANT MEZZ FUND, LP,
a Delaware limited partnership

By: Quadrant Finance Partners GP, LLC,
a Delaware limited liability company
its general partner

By: 
Name: Andrew Zeitman
Title: Manager

[End of signatures.]

EXHIBIT A

[Intentionally Omitted]

EXHIBIT B

Senior Loan Documents

(All documents dated as of the date hereof, unless otherwise indicated; each individual Borrower referenced below is defined on Exhibit E attached hereto.)

1. Loan Agreement between Borrower and Senior Lender
2. Promissory Note by Borrower in favor of Senior Lender
3. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing by Seven Hills Borrower for the benefit of Senior Lender
4. Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof, executed and delivered by Cumberland Borrower, Eastman Borrower and Main Street Borrower for the benefit of Senior Lender
5. Mortgage, Assignment of Leases and Rents and Security Agreement dated the date hereof, executed and delivered by Pine Tree Borrower and Heather Glen Borrower for the benefit of Senior Lender
6. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof, executed and delivered by Auburn Cord Borrower, Plainfield Village Borrower and Westgate Borrower for the benefit of Senior Lender
7. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof, executed and delivered by Burlington Borrower for the benefit of Senior Lender
8. Mortgage, Assignment of Leases and Rents and Security Agreement dated the date hereof, executed and delivered by Ville Platte Borrower for the benefit of Senior Lender
9. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof, executed and delivered by Sweden Borrower for the benefit of Senior Lender
10. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof, executed and delivered by Mayodan Borrower for the benefit of Senior Lender
11. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof, executed and delivered by Longview Borrower for the benefit of Senior Lender
12. Assignment of Leases and Rents by Seven Hills Borrower for the benefit of Senior Lender

13. Assignment of Leases and Rents by Cumberland Borrower, Eastman Borrower and Main Street Borrower for the benefit of Senior Lender
14. Assignment of Leases and Rents by Pine Tree Borrower and Heather Glen Borrower for the benefit of Senior Lender
15. Assignment of Leases and Rents by Auburn Cord Borrower, Plainfield Village Borrower and Westgate Borrower for the benefit of Senior Lender
16. Assignment of Leases and Rents by Burlington Borrower for the benefit of Senior Lender
17. Assignment of Leases and Rents by Ville Platte Borrower for the benefit of Senior Lender
18. Assignment of Leases and Rents by Sweden Borrower for the benefit of Senior Lender
19. Assignment of Leases and Rents by Mayodan Borrower for the benefit of Senior Lender
20. Assignment of Leases and Rents by Longview Borrower for the benefit of Senior Lender
21. Guaranty of Recourse Obligations by Jonathan M. Larmore (“**Guarantor**”) for the benefit of Senior Lender (the “**Senior Loan Guaranty**”)
22. Environmental Indemnity Agreement by Borrower and Guarantor for the benefit of Senior Lender
23. Conditional Assignment of Management Agreement by Borrower, Senior Lender and Arciterra Companies, LLC, an Arizona limited liability company (“**Manager**”)
24. Cash Management Agreement by and among Borrower, Senior Lender and PNC Bank, National Association
25. Clearing Account Agreement by and among Borrower, Senior Lender and PNC Bank, National Association
26. Notice of Final Agreement by Borrower, Guarantor and Senior Lender
27. Notice of Assignment of Claims by Senior Lender
28. 255 Affidavit
29. 291-f Notice by Sweden Borrower to the tenants listed therein
30. Escrow Agreement by Winston & Strawn LLP, agreed and acknowledged by Borrower and the title company named therein

31. UCC-1 Financing Statement naming Seven Hills Borrower as debtor, and Lender as secured party
32. UCC-1 Financing Statement naming Cumberland Borrower, Eastman Borrower and Fayetteville Borrower as debtor, and Lender as secured party
33. UCC-1 Financing Statement naming Danville Borrower and New Lenox Borrower as debtor, and Lender as secured party
34. UCC-1 Financing Statement naming Auburn Borrower, Plainfield Borrower and Westgate Borrower as debtor, and Lender as secured party
35. UCC-1 Financing Statement naming Burlington Borrower as debtor, and Lender as secured party
36. UCC-1 Financing Statement naming Ville Platte Borrower as debtor, and Lender as secured party
37. UCC-1 Financing Statement naming Sweden Borrower as debtor, and Lender as secured party
38. UCC-1 Financing Statement naming Mayodan Borrower as debtor, and Lender as secured party
39. UCC-1 Financing Statement naming Longview Borrower as debtor, and Lender as secured party
40. UCC 1 Financing Statement naming Borrower as debtor, and Lender as secured party
41. Post-Closing Agreement

EXHIBIT C

Mezzanine Loan Documents

(All documents dated as of the date hereof, unless otherwise indicated; each individual Mezzanine Borrower referenced below is defined on Exhibit F attached hereto.)

1. Mezzanine Loan Agreement between Mezzanine Borrower and Mezzanine Lender
2. Promissory Note – Mezzanine Loan by Mezzanine Borrower in favor of Mezzanine Lender
3. Mezzanine Pledge and Security Agreement by Mezzanine Borrower and accepted by Mezzanine Lender
4. Certificated Securities Representing Pledged Equity - Share Certificate for Seven Hills Borrower
5. Certificated Securities Representing Pledged Equity - Share Certificate for Cumberland Borrower
6. Certificated Securities Representing Pledged Equity - Share Certificate for Eastman Borrower
7. Certificated Securities Representing Pledged Equity - Share Certificate for Main Street Borrower
8. Certificated Securities Representing Pledged Equity - Share Certificate for Pine Tree Borrower
9. Certificated Securities Representing Pledged Equity - Share Certificate for Heather Glen Borrower
10. Certificated Securities Representing Pledged Equity - Share Certificate for Auburn Cord Borrower
11. Certificated Securities Representing Pledged Equity - Share Certificate for Plainfield Village Borrower
12. Certificated Securities Representing Pledged Equity - Share Certificate for Westgate Borrower
13. Certificated Securities Representing Pledged Equity - Share Certificate for Burlington Borrower
14. Certificated Securities Representing Pledged Equity - Share Certificate for Ville Platte Borrower

15. Certificated Securities Representing Pledged Equity - Share Certificate for Sweden Borrower
16. Certificated Securities Representing Pledged Equity - Share Certificate for Mayodan Borrower
17. Certificated Securities Representing Pledged Equity - Share Certificate for Longview Borrower
18. Assignment of Membership Interest in blank from Seven Hills Mezz Borrower
19. Assignment of Membership Interest in blank from Cumberland Mezz Borrower
20. Assignment of Membership Interest in blank from Eastman Mezz Borrower
21. Assignment of Membership Interest in blank from Main Street Mezz Borrower
22. Assignment of Membership Interest in blank from Pine Tree Mezz Borrower
23. Assignment of Membership Interest in blank from Heather Glen Mezz Borrower
24. Assignment of Membership Interest in blank from Auburn Cord Mezz Borrower
25. Assignment of Membership Interest in blank from Plainfield Village Mezz Borrower
26. Assignment of Membership Interest in blank from Westgate Mezz Borrower
27. Assignment of Membership Interest in blank from Burlington Mezz Borrower
28. Assignment of Membership Interest in blank from Ville Platte Mezz Borrower
29. Assignment of Membership Interest in blank from Sweden Mezz Borrower
30. Assignment of Membership Interest in blank from Mayodan Mezz Borrower
31. Assignment of Membership Interest in blank from Longview Mezz Borrower
32. Environmental Indemnity Agreement – Mezzanine Loan by Mezzanine Borrower and Guarantor in favor of Mezzanine Lender
33. Guaranty of Recourse Obligations – Mezzanine Loan by Guarantor for the benefit of Mezzanine Lender
34. Consent of Manager – Mezzanine Loan by Mezzanine Borrower to Mezzanine Lender and acknowledged and consented to by Manager

35. Property Owner Acknowledgement by Borrower

42. UCC-1 Financing Statement naming Mezzanine Borrower as debtor, and Mezzanine Lender as secured party

EXHIBIT D

Permitted Fund Managers

1. iStar Financial Inc.
2. Capital Trust
3. Archon Capital, L.P.
4. Goldman, Sachs & Co.
5. The Blackstone Group International Ltd.
6. Apollo Global Real Estate
7. Colony Capital, LLC/Colony Financial, Inc.
8. Praedium Group
9. Fortress Investment Group LLC
10. Lonestar Funds
11. Rockwood Capital, LLC
12. Clarion Partners
13. Walton Street Capital, LLC
14. Starwood Capital Group/Starwood Property Trust, Inc.
15. BlackRock, Inc.
16. AREA Property Partners
17. Garrison Investment Group
18. LoanCore Capital/DivCore Capital
19. Rockpoint Group
20. Torchlight Investors
21. Westbrook Partners
22. One William Street Capital Management, L.P.
23. OZ Management, LP

24. OZ Management II, LP
25. H/2 Capital Partners
26. Vornado Realty Trust
27. SL Green Realty Corp.
28. Boston Properties
29. J.P. Morgan Asset Management
30. Morgan Stanley Prime Property Fund
31. AEW Capital Management
32. Brookfield Asset Management Inc.
33. Rialto Capital Management
34. DLJ Real Estate Capital Partners
35. Lend-Lease Real Estate Investments
36. J.E. Robert Companies
37. Varde Partners
38. PIMCO
39. Och-Ziff Capital Management Group
40. Invesco
41. Invescorp

EXHIBIT E

LIST OF BORROWERS

1. AT Seven Hills Aurora CO II, LLC, a Delaware limited liability company (the “**Seven Hills Borrower**”)
2. AT ALTUS Cumberland GA II, LLC, a Delaware limited liability company (the “**Cumberland Borrower**”)
3. AT Eastman GA II, LLC, a Delaware limited liability company (the “**Eastman Borrower**”)
4. ATA Lanier Fayetteville GA II, LLC, a Delaware limited liability company (the “**Main Street Borrower**”)
5. AT PT Danville IL II, LLC, a Delaware limited liability company (the “**Pine Tree Borrower**”)
6. AT New Lenox IL-Inline II, LLC, a Delaware limited liability company (the “**Heather Glen Borrower**”)
7. AT Auburn Plaza IN II, LLC, a Delaware limited liability company (the “**Auburn Cord Borrower**”)
8. AT Plainfield Village IN II, LLC, a Delaware limited liability company (the “**Plainfield Village Borrower**”)
9. Arciterra Westgate Indianapolis IN II, LLC, a Delaware limited liability company (the “**Westgate Borrower**”)
10. AT HL Burlington IA II, LLC, a Delaware limited liability company (the “**Burlington Borrower**”)
11. AT Ville Platte LA II, LLC, a Delaware limited liability company (the “**Ville Platte Borrower**”)
12. AT Sweden NY II, LLC, a Delaware limited liability company (the “**Sweden Borrower**”)
13. AT Mayodan NC II, LLC, a Delaware limited liability company (the “**Mayodan Borrower**”)
14. AT Longview TX II, LLC, a Delaware limited liability company (the “**Longview Borrower**”)

EXHIBIT F

LIST OF CURRENT MEZZANINE BORROWERS

1. AT Seven Hills Aurora Member, LLC, a Delaware limited liability company (the “**Seven Hills Mezz Borrower**”)
2. AT ALTUS Cumberland Member, LLC, a Delaware limited liability company (the “**Cumberland Mezz Borrower**”)
3. AT Eastman Member, LLC, a Delaware limited liability company (the “**Eastman Mezz Borrower**”)
4. ATA Lanier Fayetteville Member, LLC, a Delaware limited liability company (the “**Main Street Mezz Borrower**”)
5. AT PT Danville Member, LLC, a Delaware limited liability company (the “**Pine Tree Mezz Borrower**”)
6. AT New Lenox-IL Member, LLC, a Delaware limited liability company (the “**Heather Glen Mezz Borrower**”)
7. AT Auburn Plaza Member, LLC, a Delaware limited liability company (the “**Auburn Cord Mezz Borrower**”)
8. AT Plainfield Village Member, LLC, a Delaware limited liability company (the “**Plainfield Village Mezz Borrower**”)
9. Arciterra Westgate Indianapolis Member, LLC, a Delaware limited liability company (the “**Westgate Mezz Borrower**”)
10. AT HL Burlington Member, LLC, a Delaware limited liability company (the “**Burlington Mezz Borrower**”)
11. AT Ville Platte Member, LLC, a Delaware limited liability company (the “**Ville Platte Mezz Borrower**”)
12. AT Sweden Member, LLC, a Delaware limited liability company (the “**Sweden Mezz Borrower**”)
13. AT Mayodan Member, LLC, a Delaware limited liability company (the “**Mayodan Mezz Borrower**”)
14. AT Longview Member, LLC, a Delaware limited liability company (the “**Longview Mezz Borrower**”)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 16th day of July, 2025, via Notice of Electronic Filing, generated and transmitted by the ECF system of the District of Arizona, to all CM/ECF registrants.

/s/ Cassidy Kitterman

Cassidy Kitterman, Esq.

EXHIBIT B

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6
7 **IN THE UNITED STATES DISTRICT COURT**
8
9 **FOR THE DISTRICT OF ARIZONA**

10 United States Securities and Exchange
11 Commission,

12 Plaintiff,

13 v.

14 Jonathan Larmore, *et al.*,

15 Defendants, and
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17 Michelle Larmore; Marcia Larmore; CSL
18 Investments, LLC; MML Investments,
19 LLC; Spike Holdings, LLC; and JMMAL
20 Investments, LLC,

21 Relief Defendants.
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23
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Case No.: 2:23-cv-02470-DLR

**[PROPOSED] ORDER GRANTING
QUADRANT MEZZ FUND LP'S
MOTION FOR LEAVE TO
INTERVENE TO FILE AND BE
HEARD ON ITS
LIMITED OPPOSITION TO THE
RECEIVER'S MOTION FOR
ORDERS (I) APPROVING (A) THE
ENGAGEMENT AND
COMPENSATION OF MARCUS &
MILLICHAP REAL ESTATE
INVESTMENT SERVICES AS
BROKER FOR THE SALE OF THE
PROPERTIES, (B) THE SALE AND
AUCTION PROCEDURES FOR THE
SALE OF THE PROPERTIES; (II)
APPROVING THE SALE OF THE
PROPERTIES AFTER AUCTION,
FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND
INTERESTS; AND (III) GRANTING
RELATED RELIEF**

26 Having reviewed and considered Quadrant Mezz Fund LP's ("Quadrant") Motion for
27 Leave to Intervene to File and Be Heard on its Limited Opposition (the "Motion") to the
28

1 Receiver's Motion For Orders (I) Approving (A) The Engagement And Compensation Of
2 Marcus & Millichap Real Estate Investment Services As Broker For The Sale Of The
3 Properties, (B) The Sale And Auction Procedures For The Sale Of The Properties; (II)
4 Approving The Sale Of The Properties After Auction, Free And Clear Of All Liens, Claims,
5 Encumbrances And Interests; And (III) Granting Related Relief (the "Sale Motion"), it is
6 hereby ordered that:
7

- 8 1. Quadrant's Motion is GRANTED in its entirety;
- 9 2. Quadrant's Motion and the Limited Opposition attached thereto as Exhibit "A" are
10 timely;
- 11 3. Quadrant is permitted to intervene in this action and participate in any hearing on the
12 Sale Motion; and
- 13 4. Quadrant is authorized to file its Limited Opposition to the Sale Motion.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 16th day of July, 2025,
via Notice of Electronic Filing, generated and transmitted by the ECF system of the District
of Arizona, to all CM/ECF registrants.

/s/ Cassidy Kitterman

Cassidy Kitterman, Esq.