



W3145308

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Leann H. Kilts, WEBER COUNTY RECORDER
16-Apr-21 0455 PM FEE \$40.00 DEP BR
REC FOR: METRO NATIONAL TITLE
ELECTRONICALLY RECORDED

Parcel No. 01-022-0048
01-022-0036

MSBNA Loan No. 20-63752

PARK AVENUE OGDEN PROPERTIES, LLC and CALADONIAN OGDEN PROPERTIES,
LLC, as tenants in common, as grantor
(Borrower)

to

METRO NATIONAL TITLE, as trustee
(Trustee)

and

MORGAN STANLEY BANK, N.A., as beneficiary
(Lender)

DEED OF TRUST AND
SECURITY AGREEMENT

Dated: April 16, 2021

County: Weber

PREPARED BY AND UPON
RECORDATION RETURN TO:

McCoy & Orta, P.C.
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Oklahoma City, OK 73102

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THIS DEED OF TRUST AND SECURITY AGREEMENT (this "**Security Instrument**") is made as of the 16th day of April, 2021, by **PARK AVENUE OGDEN PROPERTIES, LLC**, a Delaware limited liability company and **CALADONIAN OGDEN PROPERTIES, LLC**, a Delaware limited liability company each having its principal place of business at 5288 S. Commerce Drive, Suite B-150, Murray, Utah 84107 as tenants in common, (hereinafter individually and collectively, as the context requires on favor of Lender, referred to as "**Borrower**"), as grantor, to **METRO NATIONAL TITLE**, a Utah corporation, having an address at 345 East Broadway, Salt Lake City, UT 84111 ("**Trustee**"), as trustee, for the benefit of **MORGAN STANLEY BANK, N.A.**, a national banking association, having an address at 1585 Broadway, New York, New York 10036 ("**Lender**"), as beneficiary.

RECITALS:

Borrower by its promissory note of even date herewith given to Lender is indebted to Lender in the principal sum of FIVE MILLION TWO HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$5,220,000.00) (the "**Loan Amount**") in lawful money of the United States of America (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "**Note**"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note. The Note evidences a loan from Lender to Borrower (the "**Loan**").

Borrower desires to secure the payment of the Debt (defined in Section 2.1) and the performance of all of its obligations under the Note and the Other Obligations (defined in Section 2.2).

ARTICLE I GRANTS OF SECURITY

Section 1.1 **Property Mortgaged**. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, its successors and assigns, for the benefit of Lender, and grant a security interest to Lender and Trustee in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

(a) **Land**. The real property described in **Exhibit A** attached hereto and made a part hereof (the "**Land**");

(b) **Additional Land**. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) **Improvements**. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state, states, commonwealth or commonwealths where any of the Property is located (the "**Uniform Commercial Code**"), and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases and other agreements 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 (collectively, the "**Leases**"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder, cash, letters of credit or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, early termination fees and payments and other termination fees and payments (any such early termination fees, payments and other termination fees and payments, the "**Lease Termination Fees**"), revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and

apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(h) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property (but only following the occurrence of and during the continuance of an Event of Default);

(l) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, including, but not limited to tenant in common agreements (each a "TIC Agreement"), respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default (as defined in Section 10.1), to receive and collect any sums payable to Borrower thereunder;

(m) Intangibles. All trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) Water Rights. All water and water rights, ditches and ditch rights, reservoirs and storage rights, wells and well rights, springs and spring rights, groundwater rights (whether tributary, nontributary or not-nontributary), water contracts, water allotments, water taps, shares in ditch or reservoir companies, and all other rights of any kind or nature in or to the use of water, which are appurtenant to, historically used on or in connection with, or located on or under the Land, together with any and all easements, rights of way, fixtures, personal property, contract rights, permits or decrees associated with or used in connection with any such rights;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property including, without limitation, all accounts established or maintained pursuant to the Cash Management Agreement of even date herewith; together with

all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof; and

(p) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (o) above.

Section 1.2 Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender and Trustee Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.8, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Debt for use in the payment of such sums.

Section 1.3 Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender and Trustee, as security for the Obligations (defined in Section 2.3), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

Section 1.4 Pledge of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund (defined in Section 3.5), Net Proceeds (defined in Section 3.7) and condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

Section 1.5 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and of Trustee, and for their successors and assigns, forever; IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument; PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, this Security Instrument and the other Loan Documents, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE II DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article I are given for the purpose of securing the payment of the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

- (a) the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) interest, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the other Loan Documents (defined in Section 3.2);
- (c) the Default Consideration (as defined in the Note), if any;
- (d) all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the other Loan Documents;
- (e) all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and
- (f) all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender (including, without limitation, reasonable attorneys' fees).

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article I are also given for the purpose of securing the performance of the following (the "Other Obligations"):

- (a) all other obligations of Borrower contained herein;
- (b) each obligation of Borrower contained in the Note and in the other Loan Documents; and
- (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, this Security Instrument or the other Loan Documents.

Section 2.3 Debt and Other Obligations. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

Section 2.4 Payments. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

ARTICLE III BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument. Each borrower hereby designates and appoints **PARK AVENUE OGDEN PROPERTIES, LLC**, a Delaware limited liability company ("Primary Account Borrower") to open an account with Lender solely for purposes of funding the proceeds of the Loan Amount through a single account, and Primary Account Borrower shall receive the proceeds of the Loan Amount from Lender for the benefit of, and on behalf of, all Borrowers to be distributed to each Borrower in accordance with the terms of the Lender Settlement Statement executed by each Borrower in connection with the Note.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others in connection with the Loan, together with any supplements, amendments, modifications or alterations thereto (together with the Note and this Security Instrument, collectively, the "Loan Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive "all risk" or "special form" insurance including, but not limited to, loss caused by acts of terrorism and any type of windstorm or hail on the Improvements and the personal property at the Property, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings); (B) written in such amount as to avoid the application of any coinsurance penalty; (C) providing for no deductible in excess of \$25,000 for all such insurance coverage except as otherwise provided herein and except for the perils of earthquake and windstorm, which deductible shall not exceed five percent (5%) of total insurable value of the Property per loss; and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, including loss to the undamaged portion of the building, demolition costs and increased costs of construction in such amount as may be acceptable to Lender. In addition, Borrower shall obtain: (x) if any portion of the Improvements or Personal Property is currently or at any time in the future located in a federally designated special flood hazard area ("SFHA"), flood hazard insurance for all such Improvements and/or Personal Property located in the SFHA in an amount equal to (1) the maximum amount of building and/or contents insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National

Flood Insurance Reform Act of 1994, the Flood Insurance Reform Act of 2004, or the Biggert-Waters Flood Insurance Reform Act of 2012, as each may be amended, plus (2) such greater amount as Lender shall require, in each case with deductibles acceptable to Lender; and (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to clauses (x) and (y) hereof shall be on terms consistent with the comprehensive all-risk insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including acts of terrorism, against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be an "occurrence" form with a limit of not less than One Million and No/100 Dollars (\$1,000,000) per occurrence and Two Million and No/100 Dollars (\$2,000,000) in the aggregate; (B) to continue at not less than the aforesaid limit until required to be changed by Lender by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) contractual liability for all insured contracts; and (5) contractual liability covering the indemnities contained in Section 13.1 hereof to the extent the same is available;

(iii) workers' compensation, with respect to any employees of Borrower, subject to the statutory limits of the State, and employer's liability insurance with a limit of at least \$1,000,000.00 per accident and per disease per employee, and \$1,000,000.00 for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property;

(iv) Business income/loss of rents insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above and subsection (v) below for a period commencing at the time of loss for such length of time as it takes to repair or replace with the exercise of due diligence and dispatch for at least twelve (12) months; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or for such period as may be reasonably required by the Lender, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the net operating income and fixed expenses for the Property for a period from the date of loss for a period of twelve (12) months. The amount of such business income/loss of rents insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the net operating income and fixed expenses for the Property for the succeeding twelve (12) month period, based upon the assumption that no casualty has or will occur. All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note and the other Loan Documents and otherwise as determined by Lender in its sole discretion; provided, however, that nothing herein

contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for herein and in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(v) Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery, and equipment located in, on or about the Property and insurance against loss of occupancy or use arising from any breakdown in such amounts as are generally required by institutional lenders for properties comparable to the Property;

(vi) At all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) commercial general liability and umbrella liability insurance covering claims related to the construction, repairs or alterations being made which are not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Subsection 3.3(a)(i) written in a so-called builder's risk completed value form in amounts acceptable to Lender (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.3(a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving any coinsurance provisions;

(vii) umbrella liability insurance, including acts of terrorism, in addition to primary coverage in an amount not less than \$5,000,000.00 per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above and the motor vehicle liability coverage required under subsection (viii) below;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000), if applicable;

(ix) so-called "dramshop" insurance or other liability insurance required in connection with the sale of alcoholic beverages, if applicable;

(x) insurance against employee dishonesty, with respect to any employees of Borrower, in an amount acceptable to Lender, if applicable;

(xi) if "acts of terrorism" or other similar acts or events or "fire following" such acts or events are excluded from Borrower's comprehensive all risk insurance policy or policies required under subsections (a)(i) and (iv) above, Borrower shall obtain an endorsement to such policy or policies, or a separate policy from an insurance provider which satisfies the requirements of Section 3.3(b), insuring against all such excluded acts or events and "fire following" such acts or events on terms consistent with subsections (a)(i) and (iv) above ("**Terrorism Insurance**") in an amount not less than the sum of one hundred percent (100%) of the "Full Replacement Cost" and the business income/loss of rents insurance required in subsection (a)(iv) above); provided

that such endorsement or policy shall be in form and substance satisfactory to Lender. Notwithstanding the foregoing, for so long as the Terrorism Risk Insurance Act of 2002, as extended and modified by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (“TRIPRA”) is in effect (including any extensions thereof or if another federal governmental program is in effect relating to “acts of terrorism” which provides substantially similar protections as TRIPRA), Lender shall accept terrorism insurance which covers against “covered acts” as defined by TRIPRA (or such other program) as full compliance with this Section 3.3(a)(xi) as it relates to the risks that are required to be covered hereunder but only in the event that TRIPRA (or such other program) continues to cover both domestic and foreign acts of terrorism; and

(xii) upon sixty (60) days’ notice, such other reasonable insurance and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Subsection 3.3(a) hereof shall be obtained under valid and enforceable policies (the “Policies” or in the singular, the “Policy”), and shall be issued by financially sound and responsible insurance companies authorized to do business in the State where the Property is located having (i) a general policy rating of A or better and a financial class of VIII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company Inc. is no longer available, a similar rating from a similar or successor service) and (ii) a financial strength rating by a credit rating agency approved by Lender (a “Rating Agency”) of not less than “A-” by S&P or such comparable rating by such other Rating Agency. All insurers providing insurance required by this Security Instrument shall be authorized to issue insurance in the state or commonwealth in which the Property is located. The Policy referred to in Subsection 3.3(a)(ii) above shall name Lender as an additional named insured and the Policies referred to in Subsection 3.3(a)(i), (iv), (v), (vi) and (vii), and as applicable (viii), above shall provide that all proceeds be payable to Lender as set forth in Section 3.7 hereof. The Policies referred to in Subsections 3.3(a)(i), (v), (vi) and (vii) shall also contain: (i) a standard “non-contributory mortgagee” endorsement or its equivalent relating, *inter alia*, to recovery by Lender notwithstanding the negligent or willful acts or omission of Lender; and (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender. All Policies shall contain (i) a provision that such Policies shall not be cancelled or terminated, nor shall they expire, without at least thirty (30) days’ prior written notice to Lender in each instance, except ten (10) days’ prior written notice to Lender for non-payment of premium; and (ii) include effective waivers by the insurer of all claims for Insurance Premiums (defined below) against any loss payees, additional insureds and named insureds (other than Borrower). Certificates of insurance satisfactory to Lender with respect to all renewal and replacement Policies shall be delivered to Lender not less than twenty (20) days prior to the expiration date of any of the Policies required to be maintained hereunder, which certificates shall bear notations evidencing payment of applicable premiums (the “Insurance Premiums”). Originals or certificates of such replacement Policies shall be delivered to Lender promptly after Borrower’s receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or certificates of insurance required by this Security Instrument, upon ten (10) days’ prior notice to Borrower, Lender may procure such insurance at Borrower’s sole cost and expense.

(c) Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section 3.3.

(d) Any blanket insurance Policy shall provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of this Section 3.3. Without limitation of any provision hereof, (i) Lender's consent required hereunder with respect to any blanket policy shall include the schedule of locations and values with respect to the same, (ii) any blanket policy shall be in such amount and scope as would be provided if insured on its own dedicated policy and (iii) Borrower shall provide Lender with evidence of renewal of such blanket policy pursuant to Section 3.3(b) hereof.

Section 3.4 Payment of Taxes, etc.

(a) Borrower shall, prior to delinquency, pay all taxes, payments-in-lieu of taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, 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 the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not 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. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent. In no event shall any PACE Transaction (herein defined) be considered Taxes for purposes of this Security Instrument.

(b) After prior written notice to Lender, Borrower, at its own expense, may 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 of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, and (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, or Borrower shall have furnished the security as may be required

in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon, taking into consideration the amount in the Escrow Fund available for payment of Taxes.

Section 3.5 Escrow Fund. In addition to the initial deposits with respect to Taxes and Insurance Premiums made by Borrower to Lender on the date hereof to be held by Lender in escrow, Borrower shall pay to Lender on the first (1st) day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "Escrow Fund"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Provided there are sufficient amounts in the Escrow Fund and no Event of Default exists, Lender shall be obligated to pay the Taxes and Insurance Premiums as they become due on their respective due dates on behalf of Borrower by applying the Escrow Fund to the payments of such Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, other entity, government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing ("collectively, "Person") shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. Unless otherwise required by Applicable Laws (defined in Section 3.11), no earnings or interest on the Escrow Fund shall be payable to Borrower. Notwithstanding the foregoing, Borrower's obligation to make monthly deposits into the Escrow Fund for Insurance Premiums shall be suspended for so long as (i) no Event of Default has occurred and is continuing, (ii) Borrower provides Lender with written evidence reasonably satisfactory to Lender that all insurance coverages required to be maintained by Borrower pursuant to the terms of this Security Instrument are being maintained in full force and effect through one or more blanket insurance policies (provided that any such blanket insurance policies provide the same level of coverage which would otherwise be provided by a stand-alone policy and otherwise satisfy the requirements of Section 3.3(d) hereof) and (iii) Borrower provides Lender with paid receipts for the payment of the Insurance Premiums thereon at least twenty (20) days prior to the expiration of the applicable Policy.

Section 3.6 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings.

Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, without limitation, 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 Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. However, the payment of condemnation proceeds shall not constitute a prepayment triggering interest to accrue at the Default Rate nor the yield maintenance provisions of the Note. 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. Lender may apply any award or payment to the reduction or discharge of the Debt whether or not then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

Section 3.7 Restoration after Casualty/Condemnation. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration (defined below) of the Property:

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken by the power of eminent domain Borrower shall give prompt notice of such damage or taking to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender (the "Restoration").

(b) The term "Net Proceeds" for purposes of this Section 3.7 shall mean: (i) the net amount of all insurance proceeds under the Policies carried pursuant to Subsections 3.3(a)(i), (iv), (v), (vi), (vii) and (viii) of this Security Instrument as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, without limitation, reasonable counsel fees), if any, in collecting the same, or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of Lender's reasonable costs and expenses (including, without limitation, reasonable counsel fees), if any, in collecting the same (such amounts under this clause (ii) being specifically referred to as the "Condemnation Net Proceeds"), whichever the case may be. If (i) the Net Proceeds do not exceed \$50,000 (the "Net Proceeds Availability Threshold") as reasonably determined by Lender; (ii) the costs of completing the Restoration as reasonably estimated by Borrower shall be less than or equal to the Net Proceeds; (iii) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or any of the other Loan Documents; (iv) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations (including, without limitation, all applicable Environmental Laws (defined in Section 12.1); (v) (A) in the event that the Net Proceeds are

insurance proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) in the event that the Net Proceeds are condemnation awards, less than twenty-five percent (25%) of the Land constituting the Property is taken, such Land that is taken is located along the perimeter or periphery of the Property, no portion of the Improvements is located in such Lands, and such taking does not materially impair access to the Property; (vi) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower; and (vii) Lender shall be satisfied that making the Net Proceeds available for Restoration shall be permitted pursuant to REMIC Requirements (as defined below), then the Net Proceeds will be disbursed directly to Borrower.

(c) If the Net Proceeds are greater than the Net Proceeds Availability Threshold as reasonably determined by Lender or Borrower is not otherwise entitled to have the Net Proceeds disbursed directly to Borrower pursuant to Subsection 3.7(b), such Net Proceeds shall be forthwith paid to Lender to be held by Lender in a segregated account to be made available to Borrower for the Restoration in accordance with the provisions of this Subsection 3.7(c).

The Net Proceeds held by Lender pursuant to this Subsection 3.7(c) shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, subject to the following conditions:

(i) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or any of the other Loan Documents;

(ii) Lender shall, within a reasonable period of time prior to request for initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an independent architect's certification as to such costs and appropriate plans and specifications for the Restoration, such plans and specifications and cost estimates to be subject to Lender's approval, not to be unreasonably withheld, conditioned or delayed;

(iii) the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the cost of the Restoration as such costs are certified by the independent architect;

(iv) Net Proceeds are less than the then outstanding principal balance of the Note;

(v) (A) in the event that the Net Proceeds are insurance proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements has been damaged or destroyed, or rendered unusable as a result of such fire or other casualty; or (B) in the event that the Net Proceeds are condemnation awards, less than twenty-five percent (25%) of the Land constituting the Property is taken, such Land that is taken is located along the perimeter or

periphery of the Property, no portion of the Improvements is located in such Lands and such taking does not materially impair access to the Property;

(vi) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower;

(vii) Lender shall be satisfied that, upon the completion of the Restoration, the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, debt service on the Note and all required replacement reserves, reserves for tenant improvements and leasing commissions;

(viii) the Restoration can reasonably be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date (as defined in the Note), (B) the earliest date required for such completion under the terms of any Major Leases (defined in Section 3.8) and (C) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking, as applicable;

(ix) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations (including, without limitation, all applicable Environmental Laws (defined in Section 12.1)); and

(x) Lender shall be satisfied that making the Net Proceeds available for Restoration shall be permitted pursuant to REMIC Requirements (as defined below).

(d) The Net Proceeds held by Lender until disbursed in accordance with the provisions of this Section 3.7 shall constitute additional security for the Obligations. The Net Proceeds (other than the Net Proceeds paid under the Policy described in Subsection 3.3(a)(iv) which shall be applied by Lender pursuant to and in accordance with the provisions of Subsection 3.3(a)(iv)) shall be disbursed by Lender to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than once per month, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument. Final payment shall be made after submission to Lender of all licenses, permits, certificates of occupancy and other required

approvals of governmental authorization having jurisdiction and Casualty Consultant's (as defined below) certification that the Restoration has been fully completed.

(e) Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and an independent consulting engineer selected by Lender (the "**Casualty Consultant**"), such acceptance not to be unreasonably withheld, conditioned or delayed. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 3.7 shall constitute additional security for the Obligations.

(g) Except upon the occurrence and continuance of an Event of Default, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than the Net Proceeds Availability Threshold. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Net Proceeds Availability Threshold. If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

(h) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after (i) the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 3.7, and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the other Loan Documents.

(i) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 3.7(h) shall be

retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Debt.

(j) Notwithstanding the foregoing or anything to the contrary contained in this Security Instrument, in the event that the loan evidenced by the Note is included in a REMIC Trust and, after giving effect to any release of any portion of the real property relating to the Property following a casualty or a taking by eminent domain with respect to the Property, the loan evidenced by the Note would fail to satisfy any REMIC Requirements as the result of such release, then Borrower shall, within five (5) days of demand by Lender (but in any event prior to, and as a precondition to, any release of any portion of the Property), prepay the principal balance of the loan evidenced by the Note by an amount sufficient to satisfy REMIC Requirements (such payment, the "**Condemnation Payment**"). As used in this Security Instrument, (i) the term "**REMIC Requirements**" shall mean any applicable legal requirements relating to any REMIC Trust (including, without limitation, any constraints, rules and/or other regulations and/or requirements relating to the servicing, modification and/or other similar matters with respect to the loan evidenced by the Note (or any portion thereof and/or interest therein)), (ii) the term "**REMIC Trust**" shall mean a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code that holds the Note and (iii) the term "**Code**" shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

Section 3.8 Leases and Rents.

(a) Borrower may enter into a proposed Lease (including the renewal or extension of an existing Lease (a "**Renewal Lease**")) without the prior written consent of Lender, provided such proposed Lease or Renewal Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (ii) is an arms-length transaction with a bona fide, independent third party tenant, (iii) does not have a materially adverse effect on the value of the Property taken as a whole, (iv) is subject and subordinate to the Security Instrument and the lessee thereunder agrees to attorn to Lender, and (v) is written on the standard form of lease approved by Lender. All proposed Leases which do not satisfy the requirements set forth in this Subsection 3.8(a) shall be subject to the prior approval of Lender and its counsel, (which consent shall not be unreasonably withheld or delayed) at Borrower's expense. Borrower shall promptly deliver to Lender copies of all Major Leases (as defined below) or other Leases specifically requested by Lender, and amendments thereto, which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Subsection.

(b) Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of any of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed, (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the lessor's interest in any of the Leases or the Rents; and (vi) shall not consent to any assignment of or subletting under any Leases not in accordance with their terms, without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed.

(c) Borrower may, without the consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Lease (including any guaranty, letter of credit or other credit support with respect thereto) provided that such action (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a materially adverse effect on the value of the Property taken as a whole, and provided that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Security Instrument and any subordination agreement binding upon Lender with respect to such Lease. A termination of a Lease with a tenant who is in default beyond applicable notice and grace periods shall not be considered an action which has a materially adverse effect on the value of the Property taken as a whole. Any amendment, modification, waiver, termination, rent reduction, space surrender or term shortening which does not satisfy the requirements set forth in this Subsection shall be subject to the prior approval of Lender and its counsel, at Borrower's expense. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Subsection.

(d) Notwithstanding anything contained herein to the contrary, Borrower shall not, without the prior written consent of Lender (not to be unreasonably withheld, conditioned or delayed), enter into, renew, extend, amend, modify, waive any provisions of, terminate, reduce rents under, accept a surrender of space under, shorten the term of, or consent to any assignment or sublease under, any Major Lease (other than assignments or subleases expressly permitted under any Major Lease pursuant to a unilateral right of the tenant thereunder not requiring the consent of Borrower). The term "**Major Lease**" shall mean any Lease (i) with an affiliate of Borrower, (ii) demising in the aggregate more than the lesser of (x) 2,500 rentable square feet (assuming the exercise of all fixed expansion rights and other preferential rights to lease additional space at the Property (as distinguished from rights of first offer) or (y) ten percent (10%) of the Property's total rental income and/or (iii) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i) and/or (ii) above.

Section 3.9 Maintenance and Use of Property.

(a) Borrower shall cause the Property to be maintained in a good and safe condition and repair. 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. Borrower shall 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 3.6 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 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 cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender. Upon the completion of any alteration permitted by Lender, the Property shall continue to comply with all Applicable Laws.

(b) Borrower shall not use, maintain or operate the Property in any manner that constitutes a public or private nuisance or that makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto. Borrower shall from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements to the Property. Borrower shall not make nor permit any change in the use of the Property that would materially increase the risk of fire or other hazard arising out of the operation of the Property, or do or permit to be done thereon anything that may in any way impair the value of the Property in any material respect or the lien of this Security Instrument. Borrower shall not, 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 3.10 Waste. Borrower shall not 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 of this Security Instrument. Borrower will not, 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 Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.11 Compliance With Laws.

(a) Borrower shall promptly comply with all existing and future federal, state, foreign, county, district, municipal, and local laws, orders, ordinances, governmental rules and regulations or court orders affecting Borrower, the Property, or the use thereof, including, without limitation, the laws more particularly described in Sections 5.26 and 5.27 (collectively, "Applicable Laws").

(b) Borrower shall from time to time, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that each of Borrower and the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws.

(c) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would materially increase Borrower's responsibilities for compliance with Applicable Laws without the prior written approval of Lender. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other Person acceptable to Lender.

(d) Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

(e) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the other Loan Documents; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iv) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (v) non-compliance with the Applicable Laws shall not impose civil or criminal liability on Borrower or Lender; and (vi) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

Section 3.12 Books and Records.

(a) Borrower shall keep adequate books and records of account in accordance with generally accepted accounting principles ("GAAP"), or in accordance with other methods acceptable to Lender in its reasonable discretion, consistently applied and furnish to Lender:

(i) monthly, or if the Loan (defined in Section 5.10) has been securitized or sold as a whole loan by Lender, quarterly and annual rent rolls and tenant aging/delinquency and receivable reports, dated and certified by a duly authorized officer of Borrower, detailing the names of all tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Lease and the term of each Lease, including the expiration date, the extent to which any tenant is in default under any Lease, and any other information as is reasonably required by Lender, within twenty (20) days after the end of each calendar

month, thirty (30) days after the end of each fiscal quarter or sixty (60) days after the close of each fiscal year of Borrower, as applicable;

(ii) on a monthly basis, operating statements of the Property for the immediately preceding month (and for previous periods if required by Lender), or if the Loan has been securitized or sold as a whole loan by Lender, quarterly and annual operating statements of the Property, detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements for each month and containing appropriate year to date information, all of which shall be prepared and certified by a duly authorized officer of Borrower in the form required by Lender, and if required by Lender after an uncured Event of Default, an audited annual operating statement prepared and certified by an independent certified public accountant acceptable to Lender, within twenty (20) days after the end of each calendar month, thirty (30) days after the end of each fiscal quarter or sixty (60) days after the close of each fiscal year of Borrower, as applicable;

(iii) quarterly and annual balance sheets of Borrower in the form required by Lender, prepared and certified by a duly authorized financial officer of Borrower, and if required by Lender after an uncured Event of Default, an audited annual balance sheet prepared and certified by an independent certified public accountant acceptable to Lender, each within thirty (30) days after the end of each fiscal quarter or sixty (60) days after the close of each fiscal year of Borrower, as applicable;

(iv) an annual operating budget presented on a monthly basis consistent with the annual operating statement described above for the Property, including cash flow projections for the upcoming calendar year, and all proposed capital replacements and improvements at least thirty (30) days prior to the start of each calendar year. Lender shall have the right to approve such budget; and

(v) the financial statements and certifications required to be delivered by Guarantor as set forth in that certain Guaranty of Recourse Obligations of Borrower dated as of the date hereof made by Guarantor in favor of Lender, as same may be hereinafter amended, restated or otherwise modified.

(b) Upon request from Lender, Borrower shall 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 Borrower (or an officer, general partner, member or principal of Borrower if Borrower is not an individual) under penalty of perjury 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) Borrower, any Guarantor and any Indemnitor shall furnish Lender with such other additional financial or management information (including state, commonwealth and federal tax returns, if any) as may, from time to time, be reasonably required by Lender.

(d) Borrower, any Guarantor and any Indemnitor shall furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records. After the occurrence and during the continuance of an uncured Event of Default, Borrower shall pay any reasonable out-of-pocket costs and expenses incurred by Lender to examine Borrower's books and records.

(e) Borrower covenants and agrees that, upon Lender's written request therefor in connection with the issuance of Securities, Borrower shall, at Borrower's sole cost and expense, promptly deliver (i) audited financial statements and related documentation prepared by an independent certified public accountant that satisfy securities laws and requirements for use in a public registration statement (which may include up to three (3) years of historical audited financial statements) and (ii) if, at the time one or more disclosure documents are being prepared in connection with the issuance of Securities, Lender expects that Borrower alone or Borrower and one or more of its affiliates collectively, or the Property alone or the Property and any other parcel(s) 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 (a "**Related Property**") collectively, will be a Significant Obligor, (i) the selected financial data or, if applicable, net operating income, required under Item 1112(b)(1) of Regulation AB ("**Regulation AB**") under the Securities Act of 1933 (the "**Securities Act**") and the Securities and Exchange Act of 1934 (the "**Exchange Act**") and meeting the requirements thereof, if Lender expects that the principal amount of the Loan, together with any loans made to an affiliate of Borrower or secured by a Related Property that is included in a securitization with the Loan (a "**Related Loan**"), 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 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 the securitization or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB and meeting the requirements thereof, 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 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. Additionally, if requested by Lender, Borrower shall furnish, or shall cause the applicable lessee to furnish, to Lender financial data and/or financial statements in accordance with Regulation AB for any lessee of the Property if, in connection with the issuance of Securities, Lender expects there to be, with respect to such lessee or any group of affiliated lessees, a concentration within all of the mortgage loans

included or expected to be included, as applicable, in the applicable securitization such that such lessee or group of affiliated lessees would constitute a Significant Obligor (as defined in Item 1101(k) of Regulation AB); provided, however, that in the event the related Lease does not require the related lessee to provide the foregoing information, Borrower shall use commercially reasonable efforts to cause the applicable lessee to furnish such information. Such financial data or financial statements shall be furnished to Lender within ten (10) Business Days (as defined in the Note) after notice from Lender in connection with the preparation of a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, in each case in preliminary or final form, used to offer Securities ("**Disclosure Documents**") and, with respect to the data or financial statements required pursuant to clause (i) hereof, (A) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (B) 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 (A) or (B) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the securitization is not required.

(f) Borrower acknowledges the importance to Lender of the timely delivery of each of the items required by this Section 3.12 (each, a "**Required Financial Item**" and collectively, the "**Required Financial Items**"). In the event Borrower fails to deliver to Lender any of the Required Financial Items within the time frame specified herein (each such event, a "**Reporting Failure**"), in addition to constituting an Event of Default hereunder and without limiting Lender's other rights and remedies with respect to the occurrence of such an Event of Default, Borrower shall pay to Lender the sum of \$1,000.00 per occurrence for each Reporting Failure. It shall constitute a further Event of Default hereunder if any such payment is not received by Lender within thirty (30) days of the date on which such payment is due, and Lender shall be entitled to the exercise of all of its rights and remedies provided hereunder. Notwithstanding the foregoing, the first (1st) failure of Borrower in each calendar year to make a timely delivery of a Required Financial Item shall not be a Reporting Failure or an Event of Default, unless Borrower has not delivered the Required Financial Item to Lender within ten (10) days of prior written notice of Lender.

(g) In the event that two (2) Reporting Failures occur during any twelve (12) month period during the term of the Loan, Borrower agrees to establish a lockbox and lockbox account pursuant to Lender's requirements, each in the name of Lender, and to execute Lender's standard form Cash Management Agreement, together with any documentation ancillary thereto as required by Lender, including, without limitation, a lockbox agreement with a bank acceptable to Lender, signature cards and letters to tenants, credit card companies and other account receivable counterparties directing them to pay all rents, receivables and other sums directly to the lockbox account.

Section 3.13 Payment For Labor and Materials. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property 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 hereof, except for the Permitted Exceptions (defined in Section 5.1).

Section 3.14 Performance of Other Agreements. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an Obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.15 Change of Name, Identity or Structure. Except as may be permitted under Article VIII hereof, Borrower and any Principal (herein defined) will not change Borrower's and Principal's name, identity (including its trade name or names) or, if not an individual, Borrower's or Principal's corporate, partnership or other structure (including, without limitation, if applicable, a "Division" pursuant to Section 18-217 of the Limited Liability Company Act of the State of Delaware, as amended, and as it may be further amended from time to time, and any successor statutes thereto (the "Act") or principal place of business without first (a) notifying the Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action required by Lender for the purpose of perfecting or protecting the lien and security interest of Lender and (c) in the case of a change in Borrower's or Principal's structure, without first obtaining the prior written consent of the Lender. Borrower shall promptly notify Lender in writing of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender in writing of such organizational identification number.

Section 3.16 Existence. Borrower will continuously maintain (a) its existence and shall not dissolve or permit its dissolution, (b) its rights to do business in the state or commonwealth where the Property is located and (c) its franchises and trade names, if any.

Section 3.17 Management. The management of the Property shall be by either: (a) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Property in a first-class manner; or (b) a professional property management company approved by Lender. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Lender. In no event shall any manager be appointed, removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract and to retain, or to direct Borrower to retain, a new management agent approved by Lender in accordance with the terms and provisions of that certain Conditional Assignment of Management Agreement of even date herewith made by and among Borrower, Lender and Park Avenue Ogden, LLC. All Rents generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to the Note, this Security Instrument and the other Loan Documents, and none of the Rents generated by or derived from the Property shall be diverted by Borrower and utilized for any other purpose unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. If at any time Lender consents to the appointment of a new manager, such new manager and Borrower shall,

as a condition of Lender's consent, execute a subordination of management agreement in the form then used by Lender.

Section 3.18 ERISA. Borrower shall not 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 Security Instrument or the other Loan Documents) to be a non-exempt (under a statutory or administrative exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or constitute a violation of any state statute, regulation or ruling impacting a Defined Benefit Plan or a governmental plan. 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) Borrower is not 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) either (i) Borrower is not subject to any state or commonwealth statute, regulation or ruling regulating investments of, or fiduciary obligations with respect to, governmental plans or (ii) the condition set forth in clause (c)(v); and (c) one or more of the following circumstances is true:

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

(b) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower 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);

(c) Borrower 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); or

(d) The assets of Borrower 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

(e) 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 Note, this Security Instrument or the other Loan Documents will violate such statute, regulation or ruling.

Borrower shall not maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any Employee Benefit 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.

As used herein, the following terms shall have the following meanings:

“Defined Benefit Plan” shall mean a plan, document, agreement, or arrangement currently or previously maintained or sponsored by Borrower or by any Employee Benefit Affiliate or to which either Borrower or Employee Benefit 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) Borrower could reasonably be expected to have any liability (including, without limitation, liability attributable from an Employee Benefit Affiliate). A Defined Benefit Plan shall include any plan that if it were terminated at any time, would result in Borrower or Employee Benefit 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.

“Employee Benefit 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, are treated as a single employer under any or all of Sections 414(b), (c), (m) or (o) of the Code.

“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 Employee Benefit Affiliate is making, is obligated to make or has made or been obligated to make during the last six (6) years, contributions on behalf of participants who are or were employed by any of them.

Section 3.19 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 or in the ordinary course of Borrower’s business.

Section 3.20 Distributions. Borrower agrees that there shall be no distributions to any of its direct or indirect owners (legal or beneficial) until Borrower satisfies all of its then current due and payable obligations hereunder and under the other Loan Documents, including without limitation, Borrower’s obligation to pay debt service due in connection with the Loan, deposits into reserve and escrow funds required pursuant to the Loan Documents, maintenance costs, and operating expenses of the Property set forth in the budget previously submitted to and, if required pursuant to the terms hereof, approved by Lender.

Section 3.21 Material Agreements. Borrower shall (a) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Material Agreements (defined below) and do all things reasonably prudent 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 it 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. For the purposes of this Security Instrument, "**Material Agreements**" shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, other than the property management agreement relating to the Property, if any, and the Leases, as to which either (i) there is an obligation of Borrower 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).

Section 3.22 **PACE Transactions**. Borrower shall not enter into any property-assessed clean energy loans or similar indebtedness (without regard to the name given to such indebtedness), including, without limitation, any such loans or indebtedness made or otherwise provided by any governmental authority and/or secured or repaid (directly or indirectly) by any taxes or similar assessments (a "**PACE Transaction**").

Section 3.23 **Anti-Money Laundering**. The operations of the Borrower, Principal, and Guarantor are, have been and shall be conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements and applicable anti-money laundering statutes, including, without limitation, the Patriot Act, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Borrower, any SPC Party, or Guarantor with respect to such anti-money laundering statutes is pending.

Section 3.24 **Anti-Corruption**. None of the Borrower, Principal or Guarantor, nor any director, officer, or employee of the aforementioned, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any person to secure any improper business advantage for the Borrower; and the Borrower, Principal, and Guarantor have conducted their business in compliance with all applicable anti-bribery and anti-corruption laws.

Section 3.25 **CFIUS**. During the term of the Loan, Borrower shall (and shall cause the holders of direct and/or indirect, legal and/or beneficial, interests in Borrower to) (a) within five (5) days of receipt of the same, notify Lender, and provide Lender with a copy of, any inquiry received from CFIUS (as defined herein) or any other governmental authority related to Borrower's acquisition of the Property, (b) make any filing requested by CFIUS related to Borrower's acquisition of the Property, (c) cooperate with, and fully respond to any inquiries received from, CFIUS or any governmental authority related to CFIUS's review and/or investigation (the "**CFIUS Review**") related to Borrower's acquisition of the Property, in each case within the time permitted by CFIUS or such governmental authority, as applicable, and (iii) subject to the terms and conditions of this Security Instrument, take any

mitigation measures requested by CFIUS and/or any Governmental Authority in connection with the CFIUS Review.

**ARTICLE IV
SPECIAL COVENANTS**

Borrower represents, covenants and agrees that:

Section 4.1 Property Use. The Property shall be used only for multifamily and retail uses, and for no other use, without the prior written consent of Lender.

Section 4.2 Single Purpose Entity.

(a) It has not since the date of its formation and shall not until such time as the Debt shall be paid in full:

(i) fail to be organized solely for the purpose of (I) acquiring, developing, owning, managing or operating the Property, (II) entering into this Security Instrument and the documents related hereto, and (III) engaging in any activity that is incidental, necessary or appropriate to accomplish the foregoing;

(ii) engage in any business or activity other than the acquisition, ownership, holding, leasing, operation development, improvement and maintenance of the Property, and activities incidental thereto;

(iii) acquire or own any material assets other than (I) the Property, and (II) such incidental Personal Property as may be necessary for the operation of the Property;

(iv) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(v) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the state where the Property is located, if applicable, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's TIC Agreement, Partnership Agreement, Articles or Certificate of Incorporation, Articles of Organization, Certificate of Formation, Operating Agreement or similar organizational documents, as the case may be;

(vi) own, form or acquire any subsidiary or make any investment in, any Person;

(vii) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other Person nor fail to hold all of its assets in its own name;

(viii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt and the Prior Loan (as defined below)], except for trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt (I) is unsecured, (II) is not evidenced by a note, (III) is paid when due and (IV) does not at any time exceed two percent (2%) of the outstanding principal amount of the Note;

(ix) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due;

(x) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, partners, principals and affiliates of Borrower, the affiliates of a member, partner or principal of Borrower, and any other Person or fail to maintain such books and records in the ordinary course of its business;

(xi) enter into any contract or agreement with any member, general partner, principal or affiliate of Borrower, Guarantor or Indemnitor, or any member, general partner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of Borrower, Guarantor or Indemnitor, or any member, general partner, principal or affiliate thereof;

(xii) seek the division, dissolution or winding up in whole, or in part, of Borrower;

(xiii) fail to correct any known misunderstandings regarding the separate identity of Borrower from any member, general partner, principal or affiliate thereof or any other person;

(xiv) guaranty or become obligated for the debts of any other Person or hold out its credit as being able to satisfy the debts of another Person;

(xv) make any loans or advances to any third party, including any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof, nor buy or hold evidence of indebtedness issued by any other Person (other than cash or investment grade securities);

(xvi) fail to file its own tax returns nor file a consolidated federal income tax return with any other entity, unless required by law;

(xvii) fail to hold itself out to the public as a legal entity separate and distinct from any other entity or person, fail to conduct its business solely in its own name, mislead others as to the identity with which such other party is transacting business, or suggest that Borrower is responsible for the debts of any third party (including any member, general partner, principal or affiliate of Borrower, or any member, general partner, principal or affiliate thereof);

(xviii) 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;

(xix) share any common logo with or hold itself out as or be considered as a department or division of (I) any general partner, principal, member or affiliate of Borrower, (II) any affiliate of a general partner, principal or member of Borrower, or (III) any other Person;

(xx) fail to maintain separate financial statements and accounting records, showing its assets and liabilities separate and apart from those of any other Person;

(xxi) have its assets listed on the financial statement of any other entity;

(xxii) fail to observe all applicable organizational formalities;

(xxiii) fail to pay the salaries of its own employees (if any) from its own funds;

(xxiv) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(xxv) fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;

(xxvi) fail to use separate stationery, invoices, and checks bearing its own name;

(xxvii) pledge its assets for the benefit of any other Person, other than in connection with the loan secured hereby;

(xxviii) acquire the obligations or securities of any member, general partner, principal or affiliate of Borrower, Guarantor or Indemnitor, or any member, general partner, principal or affiliate thereof;

(xxix) fail to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other entity;

(xxx) have any obligation to indemnify its partners, officers, directors or members, as the case may be, or have such an obligation only if it is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(xxxi) fail, to the fullest extent permitted by law, to consider the interests of its creditors in connection with all actions if such entity is a corporation;

(xxxii) have any of its obligations guaranteed by any member, general partner, principal or affiliate except Guarantor or Indemnitor;

(xxxiii) Borrower has not bought or held and shall not buy or hold evidence of indebtedness issued by any other Person other than as expressly and specifically permitted in accordance with the terms and provisions of this Security Instrument and the other Loan Documents;

(xxxiv) Borrower shall not form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity, other than as expressly and specifically permitted in accordance with the terms and provisions of this Security Instrument and the other Loan Documents;

(xxxv) If Borrower shall have its own board of directors/managers, Borrower shall cause its board of directors/managers to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Delaware formalities;

(xxxvi) if Borrower is a single member limited liability company, fail to be an Acceptable LLC (for purposes of this Security Instrument, "Acceptable LLC" shall mean a limited liability company formed under Delaware 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); and/or

(xxxvii) take for itself or cause any other entity to take any Material Action without the unanimous consent of its partners or members, as applicable. As used herein, the term "Material Action" shall mean, with respect to any Person, (A) to file any insolvency, or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, (B) to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, (C) to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, (D) to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, (E) to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, (F) to make any assignment for the benefit of creditors of such Person, (G) to admit in writing such Person's inability to pay its debts generally as they become due, (H) to take any action that is intended to cause such entity to become insolvent, or declare or effectuate a moratorium on the payment of any of its obligations, or (I) to take action in furtherance of any such action.

(b) In the event Borrower is a Delaware limited liability company, 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 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 successor Special Member has been admitted to Borrower as a Special Member in accordance with requirements of Delaware law as applicable. 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 Act, 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, division (whether pursuant to plan of division or otherwise), consolidation or conversion of Borrower; provided, however, such prohibition shall not limit the obligations of Special Member 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.

(c) In the event Borrower is a Delaware limited liability company, 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 laws relating to bankruptcy, insolvency or creditors rights (collectively, "**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 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.

(d) Any Borrower that is a limited liability company formed in the State of Delaware shall not have the power to divide pursuant to Section 18-217 of the Act and the organizational documents of any such Borrower shall provide an express acknowledgement that it does not have the power to divide pursuant to Section 18-217 of the Act.

(e) In addition to the foregoing, Borrower represents, covenants and agrees that (i) any assignment of limited liability company or limited partnership interests in Borrower and Principal, as applicable, and the admission of the assignee as a member or partner of Borrower, were accomplished in accordance with, and were permitted by, the organizational

documents, by-laws, limited liability company agreement or limited partnership agreement of Borrower as in effect at such time; (ii) the organizational documents of Borrower and Principal, as applicable, shall provide an express acknowledgment that Lender is an intended third-party beneficiary of the "special purpose" provisions of such organizational documents; and (iii) each amendment and restatement (if any) of each organizational document of Borrower and Principal has been accomplished in accordance with, and was permitted by, the relevant provisions of said documents prior to its amendment or restatement from time to time.

(f) Not later than ninety (90) days after and as of the end of each fiscal year of Borrower and at any other time upon request from Lender, Borrower shall provide an officer's certificate certifying as to Borrower's continued compliance with the terms of this Section 4.2 and the terms of the cash management agreement executed by Borrower in connection with the Loan (the "**Cash Management Agreement**"). Additionally, Borrower shall provide Lender with such other evidence of Borrower's compliance with this Section 4.2 and the terms of the Cash Management Agreement as Lender may reasonably request from time to time.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 Warranty of Title. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Exceptions**"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender and/or Trustee against the claims of all Persons whomsoever. None of the Permitted Exceptions, individually or in the aggregate, materially interfere with or affect the value, current use or operation of the Property or the security intended to be provided by this Security Instrument or with the ability of the Property to generate net cash flow sufficient to service the loan secured by this Security Instrument or the Borrower's ability to pay its obligations when and as they become due.

Section 5.2 Legal Status and Authority.

(a) Borrower (i) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (ii) is duly qualified to transact business and is in good standing in the state where the Property is located; and (iii) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and 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 this Security Instrument on Borrower's part to be performed.

(b) Borrower's exact legal name is correctly set forth in the first paragraph of this Security Instrument. Borrower is an organization of the type specified in the first paragraph of this Security Instrument. Borrower is incorporated in or organized under the laws of the state specified in the first paragraph of this Security Instrument. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four (4) months (or, if less than four (4) months, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph of this Security Instrument (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of formation or organization is 2021111012097 for Park Avenue Ogden Properties, LLC and 202111011972 for Caladonian Ogden Properties, LLC.

(c) The sale or issuance of the direct and/or indirect interests in Borrower did not violate any applicable provisions of the Securities Act or the Exchange Act or any other legal requirements. The acquisition of undivided interests in the Property by each Borrower did not violate any applicable provisions of the Securities Act or the Exchange Act or any other legal requirements.

(d) The Property is "single asset real estate" as defined in 11 U.S.C. section 101(51B) and for purposes of 11 U.S.C. section 362(d)(3).

Section 5.3 Validity of Documents.

(a) The execution, delivery and performance of the Note, this Security Instrument and the other Loan Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or trust agreement, articles of organization, operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Security Instrument in appropriate land records in the state or commonwealth where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); and

(b) to the best knowledge of Borrower, the Note, this Security Instrument and the other Loan Documents constitute the legal, valid and binding obligations of Borrower.

Section 5.4 Litigation. There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending, filed

or, to the best of Borrower's knowledge, threatened or contemplated against Borrower, a Guarantor, if any, an Indemnitor, if any, or against or affecting the Property in any court or by or before any other governmental authority which, if determined adversely against Borrower, a Guarantor, if any, an Indemnitor, if any, or the Property, would materially and adversely affect (a) the use, operation or value of the Property or Borrower's title to the Property, (b) the enforceability, validity, perfection or priority of the lien of this Security Instrument or the other Loan Documents, (c) the ability of Borrower to perform its obligations under this Security Instrument or the other Loan Documents, (d) the ability of any Guarantor or Indemnitor to perform its obligations under any Loan Documents to which it is a party, (e) the principal benefit of the security intended to be provided by the Loan Documents or (f) the ability of the Property to generate net cash flow sufficient to service the loan secured by this Security Instrument.

Section 5.5 Status of Property.

(a) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business 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, Applicable Laws and other similar laws.

(c) The Property is located on or adjacent to, and has rights of access to, a dedicated road open to the public.

(d) The Property has, or is served by, parking to the extent required to comply with all Leases, Property Documents, Material Agreements and all Applicable Laws.

(e) The Property is served by water, sewer, electric, sanitary sewer and storm drain facilities adequate to service the Property for its current and intended uses.

(f) The Property is free from damage caused by fire or other casualty.

(g) 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.

(h) Borrower has paid in full for, and 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 hereby.

(i) 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 Laws.

(j) Unless otherwise disclosed to the Lender in third-party reports, no portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development 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 obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(k) Unless otherwise disclosed in the survey provided to Lender, all the Improvements lie within the boundaries of the Land.

Section 5.6 No Foreign Person. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

Section 5.7 Separate Tax Lot. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.8 Leases.

(a) Except as disclosed in the rent roll for the Property delivered to and approved by Lender in writing prior to the date hereof, (i) Borrower is the sole owner of the entire lessor's interest in the Leases; (ii) the Leases are valid and enforceable and in full force and effect; (iii) all of the Leases are arms-length agreements with bona fide, independent third parties; (iv) no party under any Lease is in default; (v) all Rents due have been paid in full and no tenant is in arrears in its payment of Rents; (vi) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified occupancy statement delivered to and approved by Lender; (vii) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (viii) 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); (ix) 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; (x) there exist no offsets or defenses to the payment of any portion of the Rents and Borrower has no monetary obligation to any tenant under any Lease; (xi) Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (xii) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (xiii) the Leases are valid and enforceable against Borrower and the tenants set forth therein; (xiv) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (xv) no Person has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (xvi) each Lease is subordinate to this Security Instrument, either pursuant to its terms or a recordable subordination agreement; (xvii) no Lease has the benefit of a non-disturbance agreement that would be considered unacceptable to prudent institutional lenders; (xviii) all security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower and are being held in accordance with legal requirements; (xix) any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant have already been received such tenant; (xx) no brokerage commissions or finders fees are due and

payable regarding any Lease; (xxi) no tenant has sublet any portion of the premises demised to such tenant under its Lease or any portion thereof; (xxii) no tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the Improvements of which the leased premises are a part; (xxiii) no Person other than Borrower and the applicable tenant have any right, title or interest in and to the Leases and Rents except the rights and liens granted to Lender pursuant to the Loan Documents; (xxiv) no tenant has informed Borrower or otherwise given notice (whether written or oral) that it intends to (or will seek to): “go dark”, vacate, cease to occupy or cease to conduct business in the ordinary course at its leased premises or any portion thereof, pursuant to any force majeure clause contained in its Lease or otherwise as a result of any pandemic, including, without limitation, the COVID-19 pandemic; (xxv) no tenant has directly or indirectly (A) asserted any defense against the payment of any rent or other amounts under its Lease or the performance of any other obligations under its Lease, (B) sought or given notice (whether written or oral) that it intends to seek any relief or other concessions with respect to the payment of any rent or other amounts under its Lease or the performance of any other obligations under its Lease or (C) made any other request for or otherwise given notice (whether written or oral) that it intends to seek any amendment, deferral, forbearance, waiver or other modification of any term or provision of its Lease, in any case, pursuant to any force majeure clause contained in its Lease or otherwise as a result of any pandemic, including, without limitation, the COVID-19 pandemic; and (xxvi) Borrower is not currently in discussions or negotiations (directly or indirectly) with any tenant with respect to, and no Tenant has requested in writing, any material amendment or modification of its Lease (including, without limitation, any reduction, deferral or waiver in the rent or the term thereof or in any other amounts due thereunder).

(b) Notwithstanding anything contained herein to the contrary, Borrower shall not willfully withhold from Lender any material 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 covenants and agrees that all tenants at the Property as of the date hereof are in physical occupancy of the premises demised under their Leases, are paying full rent under their Leases, and have not exercised any right to “go dark” that they may have under the provisions of their Leases. Borrower further agrees to provide Lender with written notice of a tenant “going dark” under any commercial lease within five (5) Business Days after such tenant “goes dark” and Borrower’s failure to provide such notice shall constitute an Event of Default under this Security Instrument.

Section 5.9 Financial Condition.

(a) (i) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (ii) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

(b) No petition in bankruptcy has ever been filed by or against Borrower, any Guarantor, any Indemnitor or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and neither Borrower, any Guarantor, any Indemnitor nor any related entity, or any principal, general partner or member thereof, in the last seven (7) years has

ever made any assignment for the benefit of creditors or taken advantage of any insolvency act or any act for the benefit of debtors.

Section 5.10 Business Purposes. The loan evidenced by the Note secured by the Security Instrument and the other Loan Documents (the "Loan") is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.11 Taxes. Borrower, any Guarantor and any Indemnitor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower, any Guarantor nor any Indemnitor knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.12 Mailing Address. 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.

Section 5.13 No Change in Facts or Circumstances. All information in the application for the Loan submitted to Lender (the "Loan Application") and in all financing statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application or in satisfaction of the terms thereof, are accurate, complete and correct in all material respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such material information inaccurate, incomplete or otherwise misleading.

Section 5.14 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 5.15 Third Party Representations. Each of the representations and the warranties made by each Guarantor and Indemnitor herein or in any other Loan Document(s) is true and correct in all material respects.

Section 5.16 Illegal Activity. No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity (whether or not such illegality is determined by local, state or federal law) and to the best of Borrower's knowledge, there are no illegal activities (whether or not such illegality is determined by local, state or federal law) or activities relating to controlled substances (as determined by local, state or federal law) at the Property (including, without limitation, any growing, distributing and/or dispensing of marijuana (whether for medicinal, recreational or other uses)).

Section 5.17 Regulations T, U and X. Borrower does not own any "margin stock" as such term is defined in Regulations T, U and X of the Board of Governors of the Federal Reserve System (12 CFR Part 221), as amended. Borrower will not use any part of the proceeds from the loan to be made under this Security Instrument (a) directly or indirectly, to purchase or carry any such stock or to reduce or retire any Obligations originally incurred to purchase any such stock within the meaning of such Regulations T, U and X, (b) so as to

involve Borrower in a violation of Regulation T, U or X of such Board (12 CFR Parts 220, 221 and 224), as amended, or (c) for any other purpose not permitted by Section 7 of the Securities Exchange Act of 1934, as amended, or any of the rules and regulations respecting the extension of credit promulgated thereunder.

Section 5.18 No Plan Assets. As of the date hereof and so long as any portion of the Debt remains outstanding (a) Borrower is not and will not be an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (b) Borrower is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA, (c) transactions by or with Borrower 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 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, neither Borrower nor any Employee Benefit Affiliate maintains, sponsors or contributes to a Defined Benefit Plan or a Multiemployer Plan. Neither Borrower nor an Employee Benefit Affiliate sponsors, contributes to or maintains either currently or in the past a plan, document, agreement, or arrangement subject to ERISA.

Section 5.19 No Change in Facts or Circumstances; Disclosure. There has been no material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects the business operations or the financial condition of Borrower or the Property.

Section 5.20 Management Agreement. The property management agreement pursuant to which Park Avenue Ogden, LLC (“Manager”) manages the Property (“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. The Management Agreement was entered into on commercially reasonable terms. Other than the Management Agreement, there exist no other agreements between Borrower and Manager currently in effect concerning Manager’s management or operation of the Property.

Section 5.21 Perfection of Accounts. Borrower hereby represents and warrants to Lender that:

(a) This Security Instrument, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code) in the Accounts (as defined in the Cash Management Agreement) in favor of Lender, which security interest is prior to all other liens and is enforceable as such against creditors of and purchasers from Borrower.

(b) The Accounts constitute “deposit accounts” or “securities accounts” within the meaning of the Uniform Commercial Code as set forth in the Cash Management Agreement.

Section 5.22 Intentionally omitted.

Section 5.23 Material Agreements. With respect to each Material Agreement, Borrower hereby represents that (a) each Material Agreement is in full force and effect and has not been amended, restated, replaced or otherwise modified (except, in each case, as expressly set forth herein, (b) there are no defaults under any Material Agreement 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 Material Agreement, (c) all payments and other sums due and payable under the Material Agreements have been paid in full, (d) no party to any Material Agreement has commenced any action or given or received any notice for the purpose of terminating any Material Agreement, and (e) the representations made in any estoppel or similar document delivered with respect to any Material Agreement in connection with the Loan are true, complete and correct and are hereby incorporated by reference as if fully set forth herein.

Section 5.24 Illegal Activity/Forfeiture.

(a) No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity (whether or not such illegality is determined by local, State or federal law) and to the best of Borrower's knowledge, there are no illegal activities (whether or not such illegality is determined by local, State or federal law) or activities relating to controlled substances (as determined by local, State or federal law) at the Property (including, without limitation, any growing, distributing and/or dispensing of marijuana (whether for medicinal, recreational or other uses)).

(b) There has not been and shall never be committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property (including, without limitation, any tenant) 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 this Security Instrument, the Note, or the other 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 commit, permit or suffer to exist any illegal activities (whether or not such illegality is determined by local, state or federal law) or activities relating to controlled substances (as determined by local, state or federal law) at the Property (including, without limitation, any growing, distributing and/or dispensing of marijuana (whether for medicinal, recreational or other uses)).

Section 5.25 Guarantor Representations. Borrower hereby represents and warrants that, as of the date hereof and continuing thereafter for the term of the Loan, the representations and warranties set forth in Sections 5.13, 5.14, 5.15 and 5.19 are true and correct with respect to Guarantor, as the same are applicable to such party. Wherever the term "Borrower" is used in each of the foregoing Sections it shall be deemed to be "Guarantor" with respect to each such party.

Section 5.26 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 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 or is otherwise subject to any trade restrictions under U.S. law (including, without limitation, Cuba, Iran, North Korea, Syria and Crimea), including, without limitation, 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 and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Laws or the Loan made by Lender is in violation of Applicable Laws (“**Embargoed Person**”); (b) unless expressly waived in writing by Lender, no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Laws or the Loan is in violation of Applicable Laws; (c) to the best knowledge of Borrower, none of the funds of Borrower or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Laws or the Loan is in violation of Applicable Laws, and (d) none of Borrower or Guarantor will, directly or indirectly, use the Loan or lend, contribute or otherwise make available any proceeds of the Loan to any Person (i) to fund or facilitate any activities or business of or with any Person who, at the time of such funding or facilitation, is an Embargoed Person or (ii) in any manner that would result in a violation of any Applicable Laws, including, without limitation, OFAC. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property 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, Guarantor or any other party to the Loan is designated as an Embargoed Person.

Section 5.27 Patriot Act.

(a) 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, including Executive Order 13224 effective September 24, 2001 (collectively referred to in this Section only as the “**Patriot Act**”) are incorporated into this Section. Borrower hereby represents and warrants that Borrower and Guarantor and each and every Person affiliated with Borrower 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 Security Instrument or in the Property or will participate, in any manner whatsoever, in the Loan, is: (i) not a “blocked” Person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224 and all modifications thereto or thereof (as used in this Section only, the “**Annex**”); (ii) in full compliance with the requirements of the Patriot Act and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury (as used in this Section only, “**OFAC**”); (iii) operated under policies, procedures and practices, if

any, that are in compliance with the Patriot Act and available to Lender for their review and inspection during normal business hours and upon reasonable prior notice; (iv) 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; (v) not listed as a Specially Designated Terrorist or as a “blocked” Person on any lists maintained by the OFAC pursuant to the Patriot Act or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Act or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Act; (vi) not a Person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any Person named in the Annex or any other list promulgated under the Patriot Act or any other 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 or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property become listed on the Annex or any other list promulgated under the Patriot Act or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall immediately notify Lender. At Lenders’ option, it shall be an Event of Default hereunder if Borrower, Guarantor or any other party to any Loan Document becomes listed on any list promulgated under the Patriot Act or is indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

(b) The Patriot Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an “account” with such financial institution. Consequently, Lender may from time-to-time request, and Borrower shall provide to Lender, Borrower’s name, address, tax identification number and/or such other identification information as shall be necessary for Lender to comply with federal law. An “account” for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

Section 5.28 CFIUS Representations. Either (a) Borrower’s acquisition of the Property is not a Covered Transaction, or (b) Borrower has obtained CFIUS Approval with respect to Borrower’s acquisition of the Property. For purposes of this Security Instrument,

“**CFIUS**” shall mean (i) the Committee on Foreign Investment in the United States first established pursuant to Executive Order 11858 of May 7, 1975, and (ii) any replacement or successor thereto, including, without limitation, pursuant to FIRREA.

“**CFIUS Approval**” shall mean (a) written confirmation provided by CFIUS that the transaction described in this Section 5.28 (the “**Subject Transaction**”) is not a Covered Transaction under the DPA, (b) written confirmation provided by CFIUS that it has completed its review or, if applicable, investigation of the matter in question under the DPA, and determined that there are no unresolved national security concerns with respect to the Subject Transaction or (c) CFIUS shall have sent a report to the President of the United States requesting

the President's decision under the DPA, and the President shall have announced a decision not to take any action to suspend, prohibit or place any limitations on the Subject Transaction.

“CFIUS Review” shall have the meaning set forth in Section 3.25 hereof.

“Covered Transaction” shall have the meaning set forth in the DPA.

“DPA” shall mean the Defense Production Act of 1950, 50 U.S.C. § 4565, as amended by FIRRMA, H. R. 5515-538 (as the same may have been or may hereafter be amended, restated, supplemented or otherwise modified), all laws and regulations related thereto and all mandates, requirements, powers and similar requirements imposed or exercised thereunder (including, without limitation, any of the foregoing implemented by and/or otherwise relating to CFIUS), as the foregoing may be amended from time to time, any successor statute or statutes and all rules and regulations from time to time promulgated in connection with the foregoing.

“FIRRMA” shall mean the Foreign Investment Risk Review Modernization Act of 2018.

“Subject Transaction” shall collectively mean the transaction described in this Section 5.28.

Section 5.29 Survival of Representations. The representations and warranties set forth in Article V shall survive for so long as any amount remains payable to Lender under this Security Instrument or any of the other Loan Documents.

Section 5.30 No Breach of Fiduciary Duty. No Person currently owning a direct or indirect membership or partnership interest in Borrower (nor any past or current affiliate of such Person), has breached any fiduciary duty owed by such Person to any other Person now or previously owning a direct or indirect membership or partnership interest in Borrower or any prior owner of the Property.

ARTICLE VI OBLIGATIONS AND RELIANCE

Section 6.1 Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2 No Reliance on Lender. The members, general partners, principals and (if Borrower is a trust) beneficial owners of 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.

Section 6.3 No Lender Obligations. Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, 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. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the other 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.

Section 6.4 Reliance. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article V and Article XII without any obligation to investigate the Property 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 accepting the Note, this Security Instrument and the other Loan Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article V and Article XII.

ARTICLE VII FURTHER ASSURANCES

Section 7.1 Recording of Security Instrument, etc. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property 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 Property. 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, this Security Instrument, the other Loan Documents, any note or deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, commonwealth, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 7.2 Further Acts, etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments,

transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender and Trustee the Property and rights hereby deeded, mortgaged, 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 Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender, following 10 days' notice to Borrower, to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, (i) one or more financing statements (including, without limitation, initial financing statements, amendments thereto and continuation statements) with or without the signature of Borrower as authorized by applicable law, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property, and (ii) any amendments or modifications to the Note, this Security Instrument and/or the other Loan Documents in order to correct any scrivener's errors contained herein or therein, including, without limitation, any errors with respect to the spelling of Borrower's name, the address of the Property, the legal description of the Property and/or the date of execution of the Note, this Security Instrument and/or the other Loan Documents. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. 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 pursuant to this Section 7.2. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 7.3 Changes in Tax, Debt Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, 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, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(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 any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(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 the Note, this

Security Instrument, or any of the other 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.

Section 7.4 Estoppel Certificates.

(a) After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its commercially reasonable efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require, including, without limitation, 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, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Upon any transfer or proposed transfer contemplated by Section 18.1 hereof, at Lender's request, Borrower, any Guarantors and any Indemnitor(s) shall provide an estoppel certificate to the Investor (defined in Section 18.1) or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may reasonably require.

Section 7.5 Flood Insurance. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area" or if it is, that Borrower has obtained insurance meeting the requirements of Section 3.3(a)(vi).

Section 7.6 Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon

surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE VIII DUE ON SALE/ENCUMBRANCE

Section 8.1 No Sale/Encumbrance. Except as expressly provided in Sections 3.6 (condemnation), 8.4 and 8.5 hereof, Borrower agrees that Borrower shall not, without the prior written consent of Lender in its sole and absolute discretion, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or any interest therein or any direct or indirect interest in Borrower or permit the Property or any part thereof or any interest therein or any direct or indirect interest in Borrower to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 3.8.

Section 8.2 Sale/Encumbrance Defined. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Article VIII shall be deemed to include, but not be limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) if Borrower, any Guarantor, any Indemnitor, or any general or limited partner or member of Borrower, any Guarantor or any Indemnitor is a corporation, any merger, consolidation or voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (d) if Borrower, any Guarantor or any Indemnitor or any general or limited partner or member of Borrower, any Guarantor or any Indemnitor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or the transfer or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest or the voluntary or involuntary sale, conveyance, transfer or pledge of limited partnership interests (or the limited partnership interests of any limited partnership directly or indirectly controlling such limited partnership by operation of law or otherwise); (e) if Borrower, any Guarantor, any Indemnitor or any general or limited partner or member of Borrower, any Guarantor or any Indemnitor is a limited liability company, the change, removal or resignation of a managing member (or if no managing member, any member or non-member manager) or the transfer of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest or the voluntary or involuntary sale, conveyance, transfer or pledge of membership interests (or the membership interests of any limited liability company directly or indirectly controlling such limited liability company by operation of law or otherwise) or the or the merger, consolidation, division (pursuant to plan

of division or otherwise) of the limited liability company and/or its assets; (f) if Borrower, any Guarantor, any Indemnitor or any general or limited partner or member of Borrower, any Guarantor or any Indemnitor is a trust, the change, removal or resignation of a trustee or beneficiary; (g) the filing of an action for partition of the Property, (h) a partition of the Property, and/or (i) the entering into of a PACE Transaction.

Section 8.3 Lender's Rights. Lender reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of the Note, this Security Instrument and the other Loan Documents as so modified by the proposed transferee, payment of a transfer fee equal to one percent (1%) of the then outstanding principal balance of the Note, and all of Lender's expenses incurred in connection with such transfer, the approval by a Rating Agency of the proposed transferee, the proposed transferee's continued compliance with the covenants set forth in this Security Instrument, including, without limitation, the covenants in Section 4.2 hereof, or such other conditions as Lender shall determine in its sole discretion to be in the interest of Lender. All of Lender's expenses incurred shall be payable by Borrower whether or not Lender consents to the 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 Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property without Lender's consent. This provision shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property.

Section 8.4 Permitted Two Time Transfer. Notwithstanding the foregoing provisions of this Article VIII, until the date which is thirty (30) days following the issuance of Securities involving the Loan or any portion thereof (the "Permitted Transfer Date"), a one-time sale, conveyance or transfer of the Property in its entirety (hereinafter, "Sale") shall be permitted only with the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion; provided, however, Lender shall not be required to give its consent to a Sale during the period which occurs from the date occurring thirty (30) days prior to the Lender's proposed issuance of such Securities up to any including the Permitted Transfer Date. From and after the Permitted Transfer Date, Lender shall not unreasonably withhold consent to two (2) separate Sales (minus any Sales which have occurred prior to the Permitted Transfer Date), to any Person provided that each of the following terms and conditions are satisfied:

(a) no default after the expiration of notice or grace periods is then continuing (or would exist as a result of such Sale) hereunder, under the Note or under any of the other Loan Documents;

(b) Borrower gives Lender written notice of the terms of such prospective Sale not less than thirty (30) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Lender all such information concerning the proposed transferee of the Property (hereinafter, "Buyer") as Lender would reasonably require in evaluating an initial extension of credit to a borrower and pays to Lender a non-refundable application fee in the

amount of \$2,500.00. Lender shall have the right to approve or disapprove the proposed Buyer, such approval not to be unreasonably withheld, conditioned or delayed. In determining whether to give or withhold its approval of the proposed Buyer, Lender shall consider the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, 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 pays Lender, concurrently with the closing of such Sale, a non-refundable assumption fee in an amount equal to all out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees and recording fees, title insurance premiums and mortgage and intangible taxes, incurred by Lender in connection with the Sale plus in connection with the first (1st) Sale an amount equal to one half of one percent (0.5%) of the then outstanding principal balance of the Note, and in connection with the second (2nd) sale, an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note. Borrower also pays, concurrently with the closing of such Sale, all costs and expenses of all third parties and Rating Agencies in connection with the Sale;

(d) Buyer assumes and agrees to pay the indebtedness secured hereby as and when due subject to the provisions of Article XI of the Note and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption, including, without limitation, the execution and delivery by an affiliate of such Buyer, acceptable to Lender, of a recourse guaranty and environmental indemnity in form and substance identical to the Guaranty of Recourse Obligations and the Environmental Indemnity Agreement executed in connection with the inception of this Security Instrument, respectively;

(e) Borrower and the Buyer execute, without any cost or expense to Lender, new financing statements or financing statement amendments and any additional documents reasonably requested by Lender;

(f) Borrower delivers to Lender, without any cost or expense to Lender, such endorsements to Lender's title insurance policy, hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance satisfactory to Lender, including, without limitation, a date-down endorsement or endorsements to Lender's title insurance policy insuring the lien of this Security Instrument;

(g) Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all appropriate papers evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which papers shall include certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners or members of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Lender shall require, shall be single purpose, "bankruptcy remote" entities which satisfy the

requirements of Article IV hereof and the requirements of the Rating Agencies, and whose formation documents shall be approved by counsel to Lender (provided, however, such Buyer 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), and whose formation documents shall be approved by counsel to Lender (for purposes hereof, "**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);

(h) Buyer shall assume the obligations of Borrower under any management agreements pertaining to the Property or assign to Lender as additional security any new management agreement entered into in connection with such Sale;

(i) Buyer shall furnish an opinion of counsel satisfactory to Lender and its counsel (A) that the Buyer's formation documents provide for the matters described in subparagraph (g) above, (B) that the assumption of the indebtedness evidenced hereby has been duly authorized, executed and delivered, and that the Note, this Security Instrument, the assumption agreement and the other Loan Documents are valid, binding and enforceable against the Buyer in accordance with their terms, (C) that the Buyer and any entity which is a controlling stockholder, member or general partner of Buyer, have been duly organized, and are in existence and good standing, (D) if required by Lender, that the assets of the Buyer will not be consolidated with the assets of any other entity having an interest in, or affiliation with, the Buyer, in the event of bankruptcy or insolvency of any such entity, and (E) with respect to such other matters as Lender may reasonably request;

(j) Lender shall have received confirmation in writing from the Rating Agencies that rate the Securities or Participations (as defined in Section 18.1) to the effect that the Sale will not result in a qualification, downgrade or withdrawal of any rating initially assigned or then currently assigned or to be assigned to the Securities or Participations, as applicable (a "**Rating Agency Confirmation**"). If (i) any Rating Agency shall waive, decline or refuse to review or otherwise engage any request for a Rating Agency Confirmation hereunder collectively, an "**RA Declination Event**"), or (ii) Lender (or any Servicer acting on Lender's behalf) determines pursuant to and in accordance with any applicable pooling and servicing agreement that a Rating Agency Confirmation is not required (a "**RAC Refusal Event**") (hereinafter, each of an RA Declination Event and a RAC Refusal Event, collectively, a "**RAC Satisfaction Condition**"), such RAC Satisfaction Condition shall be deemed to satisfy, for such request only, the condition that a Rating Agency Confirmation by such Rating Agency (only) be obtained; provided, however, in the event a Rating Agency Confirmation is deemed to not be required due to the existence of a RAC Satisfaction Condition, then such action that would otherwise require a Rating Agency Confirmation shall instead require the consent of Lender in lieu of a Rating Agency Confirmation from such Rating Agency (which consent shall not be unreasonably withheld, conditioned or delayed). For purposes of clarity, any RA Declination Event or RAC Refusal Event, as applicable, shall not be deemed an RA 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 Security Instrument for any subsequent request shall apply regardless of any previous RA Declination Event or RAC Refusal Event, as applicable;

(k) Borrower's obligations under the contract of sale pursuant to which the Sale is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section 8.4;

(l) if required by Lender, Borrower shall make a corresponding increase in its deposits into the Escrow Fund with respect to Taxes in the event such Sale results in an increase in the real property tax assessment by the applicable taxing authority;

(m) The proposed Sale shall not result in a violation of any of the covenants contained herein relating to compliance with ERISA, the Patriot Act, Applicable Prescribed Laws, and Borrower shall deliver or cause the Buyer to deliver to Lender such documentation and/or evidence of compliance as Lender shall reasonably request, which may include search results;

(n) The proposed Sale shall not constitute a Covered Transaction, or, if the proposed Sale is a Covered Transaction, then CFIUS Approval shall be obtained with respect to the proposed Sale; and

(o) The proposed Sale shall not trigger any right of first refusal, option to purchase or default under any Property Document that has not expired or been waived prior to the consummation of transfer and assumption of the Loan, or default under the Management Agreement which has not been waived in writing by Manager.

Notwithstanding the foregoing, Lender shall not be required to consent to any Sale occurring prior to a Securitization (herein defined) or participation of the Loan if the consideration to be paid by Buyer as determined by Lender is less than the appraised value of the Property as determined by Lender in connection with the underwriting of the Loan.

Section 8.5 Permitted Transfers of Equity Interests. Notwithstanding the restrictions contained in Section 8.1 of this Security Instrument, the following transfers shall be permitted subject to satisfaction of the conditions set forth below: (a) a transfer (but not a pledge) by devise or descent or by operation of law upon the death of a Restricted Party (as defined below), (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 or (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, however, with respect to the transfers listed in clauses (a) or (b) above, (A) except with respect to the transfers listed in clause (a) above, no Event of Default shall have occurred and be continuing, (B) except with respect to the transfers listed in clause (a) above, Lender shall receive not less than thirty (30) days prior written notice of such transfers, (C) no such transfers shall result in a change in control of Borrower, Guarantor, any sole member or managing member of Borrower (each a

“Principal”), or any managing agent of the Property in which Borrower, Guarantor, any Principal or any affiliate thereof has, directly or indirectly, any legal, beneficial or economic interest (**“Affiliated Manager”**), (D) after giving effect to such transfers, Guarantor (together with all Guarantors and trusts for the benefit of a Guarantor and/or immediate family members of a Guarantor) shall (I) own at least a 51% direct or indirect equity ownership interest in each of Borrower and any Principal; (II) control Borrower and any Principal; and (III) control the day-to-day operation of the Property, (E) the Property shall continue to be managed in accordance with Section 3.17 hereof, (F) in the case of the transfer of any direct equity ownership interests in Borrower or in any Principal, such transfers shall be conditioned upon continued compliance with the relevant provisions of Section 4.2 hereof, (G) such transfers shall be conditioned upon Borrower’s ability to, after giving effect to the equity transfer in question, (I) remake the representations contained herein relating to the DPA and CFIUS, Patriot Act, OFAC and matters concerning Embargoed Persons (and, upon Lender’s request, Borrower shall deliver to Lender (x) a certificate signed by an authorized senior officer of Borrower containing such updated representations effective as of the date of the consummation of the applicable equity transfer, (y) a certificate signed by an authorized senior officer of Borrower certifying that each Person owning directly or indirectly twenty percent (20%) or more of the legal and/or beneficial interests in Borrower as a result of such transfer is an Acceptable Person (as defined below), and (z) searches, in form, scope and substance and from a provider reasonably acceptable to Lender, for any entity or individual owning, directly or indirectly, 20% (or, if such entity or individual is not formed, organized or incorporated in, or is not a citizen of, the United States of America, 10%) or more of the interests in Borrower as a result of such transfer) or more of the interests in Borrower as a result of such transfer), and (II) continue to comply with the covenants and representations contained herein relating to the DPA and CFIUS, ERISA matters and the Patriot Act, OFAC, and matters concerning Embargoed Persons, and (H) Borrower pays all of Lender’s out-of-pocket costs and expenses in connection with such transfer (including, without limitation, reasonable attorneys’ fees) and (I) such transfers shall not trigger any right of first refusal, option to purchase or default under any Property Document. **“Restricted Party”** shall mean Borrower, Guarantor, Principal, any Affiliated Manager, or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of, Borrower, Guarantor, Principal, any Affiliated Manager or any shareholder, partner, member or non-member manager. **“Acceptable Person”** shall mean a Person that (a) has never been convicted of a felony, (b) has never been convicted for a violation of Prescribed Laws and is not an Embargoed Person, (c) has not, within the past seven (7) years, been the subject of a proceeding under the Bankruptcy Code except any involuntary proceedings that have been discharged and (d) has no outstanding judgments which would have a material adverse effect on such Person’s ability to perform its obligations, if any, under the Note, this Security Instrument or the other Loan Documents. **“Prescribed Laws”** shall mean (i) OFAC, (ii) Patriot Act and (iii) all other legal requirements relating to economic sanctions, money laundering, bank secrecy and terrorism.

ARTICLE IX PREPAYMENT

Section 9.1 Prepayment. The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note. Notwithstanding any other provisions hereof, the payment of Insurance Proceeds or Condemnation Proceeds as

provided under Sections 3.3 and 3.6 hereof shall not constitute a prepayment of the Debt in violation of the Prepayment restrictions provided herein.

ARTICLE X DEFAULT

Section 10.1 Events 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 the Note, this Security Instrument or the other Loan Documents require immediate or prompt payment without any grace period or (B) sums which are payable on the Maturity Date (as defined in the Note), or (ii) pay within five (5) days when due (A) any monthly installment of principal and/or interest due under the Note and any amount required to be paid into any reserve funds or (B) any other sums payable under the Note, this Security Instrument or the other Loan Documents;

(b) if any of the Taxes or Other Charges is not paid prior to delinquency except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument;

(c) if the Policies are not kept in full force and effect or the Insurance Premiums are not paid in accordance with the terms hereof or if the Policies are not delivered to Lender upon request;

(d) if Borrower violates or does not comply with any of the provisions of Section 3.12, Section 4.2 or Article VIII;

(e) if any representation or warranty of Borrower, any Indemnitor or any Person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument (a "Guarantor"), or any member, general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity (defined in Section 13.4) or in any 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 respect when made;

(f) if (i) Borrower, Principal or any managing member or general partner of Borrower, Principal or any Guarantor or Indemnitor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, division, liquidation, dissolution, composition or other relief with respect to it or its debts, 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 of Borrower, Principal or any managing member or general partner of Borrower, Principal or any Guarantor or Indemnitor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower, Principal or any managing member or general partner of Borrower, Principal or any Guarantor or Indemnitor 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; or (iii) there shall be commenced against Borrower, Principal or any managing member or general partner of Borrower, Principal or any Guarantor or Indemnitor 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; or (iv) Borrower, Principal or any managing member or general partner of Borrower, Principal or any Guarantor or Indemnitor 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) Borrower, Principal or any managing member or general partner of Borrower, Principal or any Guarantor or Indemnitor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) if Borrower 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 whether it be superior or junior in lien to this Security Instrument;

(h) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments 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;

(i) if any federal tax lien is filed against Borrower, Principal, any managing member or general partner of Borrower, any Guarantor, any Indemnitor or the Property and same is not discharged of record within thirty (30) days after same is filed;

(j) if any default occurs under any guaranty or indemnity executed in connection herewith (including the Environmental Indemnity) and such default continues after the expiration of applicable grace periods, if any;

(k) if Borrower shall fail to comply with the covenants set forth in Sections 3.23, 3.24, 3.25, 5.26, 5.27 and/or 5.28 hereof;

(l) if Borrower shall fail to deliver to Lender, within ten (10) days after request by Lender, the estoppel certificates required pursuant to Section 7.4;

(m) if (i) any Borrower shall commence, file or prosecute an action for partition of the Property or (ii) any Borrower initiates litigation against another Borrower which is not dismissed within ninety (90) days;

(n) if any Borrower shall breach a TIC Agreement between each of the Borrowers or if the TIC Agreement is amended or terminated without the Lender's prior written consent; and/or

(o) if any default occurs under any other term, covenant or condition of the Note, this Security Instrument or the other Loan Documents and such default continues (i) in the

case of any default which can be cured by the payment of a sum of money, for more than ten (10) days after notice from Lender or (ii) in the case of any other such default, for thirty (30) days after notice from Lender, 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 sixty (60) days.

ARTICLE XI RIGHTS AND REMEDIES

Section 11.1 Remedies. Upon the occurrence but only during the continuation of any Event of Default, Borrower agrees that Lender may or acting by or through Trustee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) subject to the provisions of Article XI of the Note, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents;
- (f) subject to the provisions of Article XI of the Note, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt

and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any Person liable for the payment of the Debt;

(h) subject to any applicable law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

(k) surrender the Policies maintained pursuant to Article III hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums, except that Borrower's policy of liability insurance may not be surrendered by Lender unless and until Lender has actually foreclosed on the Property as provided herein, provided, however, that Lender shall have no obligation to pay the premiums associated thereof;

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 10.1(f) shall occur and be continuing, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Upon an acceleration of the Debt, and within thirty (30) days prior written notice by Lender, each Borrower shall make a Contribution (herein defined) such that the Property shall be owned by a newly-formed single-purpose entity as follows:

(i) each Borrower shall contribute (the "Contribution") 100% of their interests to the Property to a newly formed single-purpose entity (the "Roll-Up LLC");

(ii) each Borrower shall provide Lender with the following evidence that the Contribution has been completed;

(iii) the following shall be condition precedents to the Contribution: (A) Grant Deed(s) ("Grant Deed") transferring the Contribution to the Roll-Up LLC; (B) A modification of this Security Instrument and the Other Security Documents evidencing the Contribution, which modification shall be recorded in the appropriate public office; (C) Lender shall have received an endorsement to the policy of title insurance insuring Lender's interest in the Property, which endorsement shall amend the effective date of the Title Policy to the date on which the Grant Deed is recorded in the appropriate public office (taking exception for no lien, encumbrance or other matter other than those set forth in the Title Policy on the date originally issued) and shall insure that title to the Property is vested solely in the Roll-Up LLC and that the lien of the Security Instrument is not impaired by the transactions contemplated hereby; and (D) Borrower shall have paid to Lender all of Lender's out-of-pocket costs in connection with the Contribution.

If the Contribution is not completed within thirty (30) days of written demand by Lender, then Lender, as attorney in fact for each Borrower, is hereby authorized to do so in the name of

each Borrower, and complete, execute and/or file any documents, and/or take any actions necessary, to complete the Contribution. The foregoing power of attorney is coupled with an interest and cannot be revoked.

Section 11.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 11.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, 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, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, 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 or Trustee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to 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 this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4 Actions and Proceedings. Upon the occurrence and continuation of an Event of Default, Lender or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5 Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6 Examination of Books and Records. Lender, its agents, accountants and attorneys shall have the right, upon prior written notice to Borrower if no Event of Default exists, to examine and audit, during reasonable business hours, the records, books, management and other papers of Borrower and its affiliates or of any Guarantor or

Indemnitor which pertain to their financial condition or the income, expenses and operation of the Property, at the Property or at any office regularly maintained by Borrower, its affiliates or any Guarantor or Indemnitor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers.

Section 11.7 Other Rights, etc.

(a) The failure of Lender or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender or Trustee to comply with any request of Borrower, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 11.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9 Violation of Laws. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10 Right of Entry. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 11.11 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 11.12 Bankruptcy.

(a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten (10) day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE XII ENVIRONMENTAL MATTERS

Section 12.1 Environmental Representations and Warranties. Borrower represents and warrants, based upon an environmental site assessment of the Property and information that Borrower knows or should reasonably have known, that: (a) there are no

Hazardous Materials (defined below) or underground or above ground storage tanks in, on, or under the Property, except those that are both (i) in material compliance with Environmental Laws (defined below) and with permits issued pursuant thereto (if such permits are required), if any, and (ii) either (A) in amounts not in excess of that necessary to operate the Property or (B) fully disclosed to and approved by Lender in writing pursuant to the written reports resulting from the environmental site assessments of the Property delivered to Lender (the "**Environmental Report**"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Materials in violation of any Environmental Law and which would require remediation by a governmental authority in, on, under or from the Property except as described in the Environmental Report; (c) there is no threat of any Release of Hazardous Materials migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including, without limitation, a governmental entity) relating to Hazardous Materials in, on, under or from the Property; (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property known to Borrower or contained in Borrower's files and records, including, without limitation, any reports relating to Hazardous Materials in, on, under or migrating to or from the Property and/or to the environmental condition of the Property; (g) the Property currently displays no evidence of water infiltration or material water damage; (h) there are no prior or current complaints by tenants at the Property regarding water infiltration or water damage or leaks or odors related thereto, and (i) the Property currently displays no conspicuous evidence of the growth of Microbial Matter. "**Environmental Law**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including, without limitation, to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Property and relate to Hazardous Materials and/or Microbial Matter. "**Hazardous Materials**" shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls ("**PCBs**") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material", "hazardous waste", "toxic substance", "toxic pollutant", "contaminant", or "pollutant" within the meaning of any Environmental Law. "**Release**" of any Hazardous Materials includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials. "**Microbial Matter**" shall mean fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including, without limitation, mold, mildew and viruses, whether or not such Microbial Matter is living.

Section 12.2 Environmental Covenants. Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property and the Debt secured by the Loan Documents remains outstanding: (a) all uses and operations on or of the Property, by Borrower, shall be in material compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Release of Hazardous Materials in, on, under or from the Property; (c) there shall be no Hazardous Materials in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required, and (ii) (A) in amounts not in excess of that necessary to operate the Property or (B) fully disclosed to and approved by Lender in writing; (d) Borrower shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (the “Environmental Liens”); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including, without limitation, providing all relevant information and making knowledgeable Persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender, upon Lender’s reasonable belief that the Property is not in full compliance with all Environmental Laws, and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Property; and (ii) comply with any Environmental Law; (h) Borrower shall not allow any tenant or other user of the Property to violate any Environmental Law; (i) Borrower shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Release of Hazardous Materials in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including, without limitation, a governmental entity) relating in any way to Hazardous Materials; (j) Borrower shall undertake any course of action recommended by the Environmental Protection Agency to prevent the growth of Microbial Matter; (k) Borrower shall comply with any and all local, state or federal laws, legislation, guidelines or statutes at any time in effect with respect to Microbial Matter (l) upon Lender’s request (not more frequently than once per calendar year), Borrower shall engage an engineering consultant reasonably acceptable to Lender to conduct (and such consultant shall conduct) an inspection for water damage at the Property; (m) upon Lender’s request (not more frequently than once per calendar year), Borrower shall engage an environmental consultant reasonably acceptable to Lender to conduct (and such consultant shall conduct) an inspection for evidence of the growth of Microbial Matter at the Property; and (n) Borrower shall immediately adopt a remediation plan reasonably acceptable to Lender with respect to any water damage or Microbial Matter identified as a result of such environmental and/or engineering inspections.

Section 12.3 Lender’s Rights. Upon reasonable notice to Borrower, Lender and any other Person designated by Lender, including, without limitation, any representative of a

governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including, without limitation, conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and, to the extent reasonable cause may exist, taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such Person designated by Lender.

Section 12.4 Operations and Maintenance Programs. Where recommended by the Environmental Report or as a result of any other environmental assessment or audit of the Property, Borrower shall establish and comply with an operations and maintenance program with respect to the Property, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall address any asbestos containing material or lead based paint that may now or in the future be detected at or on the Property. Without limiting the generality of the preceding sentence, Lender may require (a) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (b) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (c) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, (d) access to the Property by Lender, its agents or servicer, to review and assess the environmental condition of the Property and Borrower's compliance with any operations and maintenance program, and (e) variation of the operations and maintenance program in response to the reports provided by any such consultants.

ARTICLE XIII INDEMNIFICATIONS

Section 13.1 General Indemnification.

(a) Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (defined below) from and against any and all Losses (defined below) 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 to be in compliance with any Applicable Laws; (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 (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear

interest at the Default Rate from the date Borrower is notified of the loss or damage is sustained by Lender until paid.

(b) Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each Indemnified Party from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Party and directly or indirectly arising out of or in any way relating to any transfer tax incurred by any Indemnified Party in connection with the exercise of remedies hereunder or under the Note or any other Loan Documents, including, without limitation, a foreclosure of this Security Instrument by Lender or its designee and any subsequent transfer of the Property by Lender or its designee.

(c) Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each Indemnified Party 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 Lender may incur, directly or indirectly, as a result of a default under Sections 3.18 or 5.18 of this Security Instrument.

(d) Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each Lender Indemnitee from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses) that any Lender Indemnitee may incur, directly or indirectly, as a result of (i) Borrower's acquisition of the Property being a Covered Transaction or otherwise arising under the DPA and/or (ii) a default under Sections 3.25 and/or 5.28 of this Security Instrument.

The term "**Losses**" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement of whatever kind or nature (including, without limitation, attorneys' fees and other costs of defense). The term "**Indemnified Parties**" shall mean (a) Lender, (b) any prior owner or holder of the Note, (c) any servicer or prior servicer of the Loan, (d) the officers, directors, shareholders, partners, members, employees and trustees of any of the foregoing, and (e) the heirs, legal representatives, successors and assigns of each of the foregoing.

Borrower's obligations under the Article XIII shall not apply to the extent caused by the gross negligence or willful misconduct of Lender or its agents or representatives.

Section 13.2 Mortgage and/or Intangible Tax. 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 any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents.

Section 13.3 Duty to Defend; Attorneys' 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 13.4 Environmental Indemnity. Simultaneously with this Security Instrument, Borrower and any other Person(s) identified therein (collectively, the "Indemnitors") have executed and delivered that certain environmental indemnity agreement dated the date hereof to Lender (the "Environmental Indemnity").

ARTICLE XIV WAIVERS

Section 14.1 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the other Loan Documents, or the Obligations. The foregoing waiver does not preclude Borrower from asserting such claims, counterclaims etc, in separate proceedings against the Lender.

Section 14.2 Marshalling and Other Matters. Borrower hereby waives, to the extent permitted by 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 hereunder of the Property 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 this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by Applicable Laws.

Section 14.3 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender or Trustee except (a) with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender or Trustee to Borrower and (b) with respect to matters for which Lender or Trustee is required by Applicable Laws to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender or Trustee to Borrower.

Section 14.4 Waiver of Statute of Limitations. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of

limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 14.5 Sole Discretion of Lender. Wherever pursuant to this Security Instrument (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 of Lender 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 the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

Section 14.6 **WAIVER OF TRIAL BY JURY**. **BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY 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 EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

ARTICLE XV EXCULPATION

Section 15.1 Exculpation. The provisions of Article XI of the Note are hereby incorporated by reference to the fullest extent as if the text of such Article were set forth in its entirety herein.

ARTICLE XVI NOTICES

Section 16.1 Notices. All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "**Notice**") required, permitted, or desired to be given hereunder shall be in writing sent by telefax (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 16.1. For the avoidance of doubt, Notices delivered to Lender hereunder shall be delivered both to the physical addresses listed below by one of the methods set forth in the immediately following sentence and to the email address listed below. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of sending by telefax 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:

If to Lender: Morgan Stanley Bank, N.A.
1585 Broadway
New York, NY 10036
Facsimile No. 212.507.4859
Attention: George Kok
Email: crelamnotices@morganstanley.com

with a copy to: McCoy & Orta, P.C.
100 N. Broadway, 26th Floor
Oklahoma City, Oklahoma 73102
Attention: J. Michael McCoy, Esq.
Facsimile No. (405) 236-1448

If to Borrower: Park Avenue Ogden Properties, LLC
Caladonian Ogden Properties, LLC
5288 S. Commerce Drive, Suite B-150
Murray, Utah 84107
Attention: Richard T. Callister

with a copy to: Cohne & Kinghorn
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111
Attention: Ray Beck, Esq.

Any party may change the address to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section 16.1. Notices shall be deemed to have been given on the date as set forth above, even if there is an inability to actually deliver any such Notice because of a changed address of which no Notice was given, or there is a rejection or refusal to accept any Notice offered for delivery. Notice for any party may be given by its respective counsel. Additionally, Notice from Lender may also be given by Servicer and Lender hereby acknowledges and agrees that Borrower shall be entitled to rely on any Notice given by Servicer as if it had been sent by Lender.

ARTICLE XVII APPLICABLE LAW

Section 17.1 Choice of Law. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located.

Section 17.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Laws.

**ARTICLE XVIII
SECONDARY MARKET**

Section 18.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein (the "Participations") or issue mortgage pass-through certificates or other securities (a "Securitization") evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor in such Participations or Securities (collectively, the "Investor") or any Rating Agency rating such Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any Guarantor, any Indemnitor(s) and the Property, whether furnished by Borrower, any Guarantor, any Indemnitor(s) or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under Applicable Laws to prohibit such disclosure, including, without limitation, any right of privacy.

Section 18.2 Cooperation. Borrower understands that information provided to Lender by Borrower and its agents, counsel and representatives may be included in written materials used or provided to any prospective investors and/or the Rating Agencies in connection with the Securitization, including, without limitation, road show presentation materials, marketing materials, disclosure documents, offering memoranda, term sheets, offering circulars, prospectuses, prospectus supplements, private placement memoranda and any other offering documents, in each case, in preliminary or final form, and including any amendments, supplements, exhibits, annexes and other attachments thereto (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. In the event any portion of the Disclosure Document relating to Borrower, Guarantor, Indemnitor or the Property is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information relating to Borrower, Guarantor, Indemnitor and the Property necessary to keep the Disclosure Document accurate and complete in all material respects. Borrower, Guarantor and Indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Article XVIII, including, without limitation, the taking, or refraining from taking, of such action as may be necessary to satisfy all of the reasonable conditions of any Investor, the delivery of an estoppel certificate required in accordance with Subsection 7.4(c) hereof and such other documents as may be reasonably requested by Lender, and the execution of amendments to the Note, this Security Instrument and other Loan Documents and Borrower's organizational documents as reasonably requested by Lender; and no changes to the Loan Documents shall be required that would increase Borrower's or Guarantor's affirmative obligations or decrease Borrower's or Guarantor's rights under the Loan Documents or adversely affect the economic or other material terms of the Loan. Borrower shall also furnish and Borrower, Guarantor and Indemnitor consent to Lender furnishing to such Investors or

prospective Investors or any Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower, Guarantor and Indemnitor as may be requested by Lender, any Investor, any prospective Investor or any Rating Agency in connection with any sale, transfer or Participations or Securities and shall indemnify and hold Lender harmless (and for purposes of this Section 18.2, Lender hereunder shall include its officers and directors), the affiliate of Lender (together with Lender, "Morgan Stanley") that has filed the registration statement relating to the Securities (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 "Morgan Stanley Group"), and Lender, and any other placement agent or underwriter with respect to the Securities, each of their respective directors and each Person who controls Morgan Stanley 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 Morgan Stanley 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 a Disclosure Document or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in the Disclosure Document or necessary in order to make the statements in the Disclosure Document, in light of the circumstances under which they were made, not misleading and agreeing to reimburse Lender, the Morgan Stanley Group and/or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Morgan Stanley 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 this Section 18.2 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 Properties (collectively, the "Provided Information"). The foregoing indemnification shall be effective whether or not an actual indemnification agreement is provided to, or executed by, Borrower or Guarantor; 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 agreement will be in addition to any liability which Borrower may otherwise have and shall survive the termination of this Security Instrument and the satisfaction and discharge of the Debt. Borrower agrees that the indemnification and reimbursement obligations set forth in this Section 18.2 shall apply whether or not any indemnified Person is a formal party to any lawsuits, claims or other proceedings. Such indemnified Persons are intended third-party beneficiaries of this Section 18.2.

Section 18.3 Reserves/Escrows. In the event that Securities are issued in connection with the Loan, all funds held by Lender in escrow or pursuant to reserves in accordance with the Note, this Security Instrument and/or the other Loan Documents shall be deposited in "eligible accounts" at "eligible institutions" and, to the extent applicable, invested in "permitted investments" as then defined and required by the Rating Agencies.

Section 18.4 Pledge and Assignment. Anything in this Security Instrument to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Security Instrument or the other Loan Documents, including, without limitation, anything set forth in this Article XVIII, Lender may at any time assign, pledge or otherwise create a security interest in all or any portion of its rights under the Note, this Security Instrument and any other Loan Document (including, without limitation, the advances owing to it) in favor of (i) any Federal Reserve Bank, any Federal Home Loan Bank or the central reserve bank or similar authority of any other country to secure any obligation of Lender to such bank or similar authority (a "Central Bank Pledge") or (ii) the trustee, administrator or receiver (or their respective nominees, collateral agents or collateral trustees) of a mortgage pool securing covered mortgage bonds issued by a German mortgage bank, or any other Person permitted to issue covered mortgage bonds, under German Pfandbrief legislation, as such legislation may be amended and in effect from time to time, on any substitute or successor legislation (a "Pfandbrief Pledge"). In the event that the interest of Lender that is assigned in connection with a Central Bank Pledge is foreclosed upon and transferred to the pledge thereof, Lender shall have no further liability hereunder with respect to the interest that was the subject of such transfer and the assignee shall be Lender with respect to such interest. Lender shall not be required to notify Borrower of any Central Bank Pledge or Pfandbrief Pledge. Borrower agrees to execute, within fifteen (15) Business Days after request therefor is made by Lender, any documents or any amendments, amendments and restatements, and/or modifications to any Loan Documents and/or additional documents (including, without limitation, amended, amended and restated, modified and/or additional promissory notes) and/or estoppel certificates reasonably requested by Lender in order to make the Loan Documents eligible under German Pfandbrief legislation; provided, however, that Borrower shall not be required to enter into any such documents and amendments which would increase Borrower's affirmative obligations or decrease Borrower's rights under the Loan Documents or adversely affect the economic or other material terms of the Loan.

ARTICLE XIX COSTS

Section 19.1 Expenses. Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender, for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements and any Rating Agency fees and disbursements) incurred by Lender in connection with (i) the ongoing performance of and compliance with agreements and covenants of Borrower contained in this Security Instrument and the other Loan Documents including, without limitation, confirming compliance with environmental and insurance requirements; (ii) Lender's ongoing performance of and compliance with all agreements and covenants contained in this Security Instrument and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Security Instrument and the other Loan Documents and any other documents or matters requested by Borrower; (iv) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the Liens in favor of Lender pursuant to this Security Instrument and the other 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 or otherwise, in each case against, under or affecting Borrower, this Security Instrument, the other Loan Documents, the Property, or any other security given for the Loan; (vi) enforcing any obligations of or collecting any payments due from Borrower and/or Guarantor under this Security Instrument, the other Loan Documents or with respect to the Property including customary fees, costs and expenses of the Servicer (as defined in Section 21.7) and any reasonable third-party fees and expenses incurred in each case in connection with a prepayment, release of the Property, approvals under the Loan Documents requested by Borrower, assumption of Borrower's obligations or amendment or modification of the Loan requested by Borrower subject to and in accordance with any servicing agreement or similar agreement entered into in connection with a Securitization, including: (a) any amounts payable in respect of advances (including protective advances, monthly payment advances, special servicer fee advances and advances of delinquent debt service payments), together with interest thereon, made pursuant to the servicing agreement, in each case, as a result of Borrower's default hereunder beyond any applicable grace period (or, with respect to special servicer fee advances, as a result of the Loan becoming a specially serviced loan pursuant to the servicing agreement, including, without limitation, any costs and expenses incurred in connection with transferring the Loan to a special servicer) to the extent late charges and default interest actually paid by Borrower in respect of such payments are insufficient to pay the same, (b) "liquidation fees" related to the Loan in the amounts set forth in the servicing agreement, (c) "workout fees" in the amounts set forth in the servicing agreement, and (d) "special servicing fees" for the Loan upon the Loan becoming a specially serviced loan pursuant to the servicing agreement in the amounts set forth in the servicing agreement; provided, however, that Borrower shall not be liable for the payment of (x) any monthly servicing fees (subject to Section 21.7 hereof), any fees in connection with any approval or consent with respect to a Lease, subordination, non-disturbance and attornment agreement, property management agreement, hotel franchise agreement, the release of any letter of credit, escrow analysis fees, fees for copies of loan histories, "pay by phone" payments, reserve disbursements, tax service or the continuation of UCC financing statements (for the avoidance of doubt, Borrower will pay any actual costs and expenses of Lender in connection with the foregoing, but not any fees) or (y) any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender.

Section 19.2 Legal Fees for Enforcement.

(a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the other Loan Documents and (ii) the items set forth in Section 19.1 above, and

(b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower, and all "special servicing", "workout" and/or "liquidation" fees or their equivalent (including, without limitation, any costs and expenses incurred in connection with transferring the loan evidenced by the Note to a special servicer).

Notwithstanding the foregoing, Borrower shall not be responsible for the foregoing expenses in the event Borrower is the prevailing party in the litigation.

ARTICLE XX DEFINITIONS

Section 20.1 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Trustee" shall mean "Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, without limitation, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 20.2 Headings, etc. The headings and captions of various Articles and Sections of this Security Instrument are for 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.

ARTICLE XXI MISCELLANEOUS PROVISIONS

Section 21.1 No Oral Change. This Security Instrument, and any provisions hereof, 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.

Section 21.2 Liability. If Borrower consists of more than one Person, the obligations and liabilities of each such Person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 21.3 Inapplicable Provisions. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 21.4 Duplicate Originals; Counterparts. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument 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 Security Instrument. The failure of any party hereto to execute this Security

Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 21.5 Number and Gender. 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 21.6 Brokers and Financial Advisors. Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Security Instrument other than Doug Birrell and/or CBRE ("**Broker**"). Borrower shall be responsible for paying any fees or commissions payable to Broker pursuant to a separate written agreement between Borrower and Broker. Borrower shall indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any person or entity (including, without limitation, Broker) that such person or entity acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. Borrower acknowledges that Lender may separately pay fees to Broker for referring the Loan to Lender. In addition, Broker may act as a servicer for the Loan and may receive a per annum servicing fee in connection therewith. In addition to such servicing fees, Broker may be entitled to receive a termination fee from Lender in certain circumstances in connection with the termination of such servicing. Such fees (i) are in addition to any fees which may be paid by Borrower to Broker and (ii) create a potential conflict of interest for Broker in its relationship with Borrower. Borrower acknowledges that it has had the opportunity to speak with Broker regarding such fees and that Lender is available to discuss any questions Borrower may have regarding such fees. Borrower agrees that Lender is not responsible for any recommendations or advice given to Borrower by Broker, that Lender and Borrower are dealing at arms'-length with each other in a commercial lending transaction and that no fiduciary or other special relationship exists or shall exist between them. The provisions of this Section 21.6 shall survive the expiration and termination of this Security Instrument and the payment of the Debt.

Section 21.7 Servicer. At the option of Lender, the Loan may be serviced by a servicer (the "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under the Note, this Security Instrument and the other Loan Documents to the Servicer pursuant to a servicing agreement (the "**Servicing Agreement**") between Lender and Servicer. Borrower shall be responsible for any reasonable set up fees or any other initial costs relating to or arising under the Servicing Agreement, but Borrower shall not be responsible for payment of the monthly servicing fee due to the Servicer under the Servicing Agreement; provided, however, Borrower shall be required to pay any special servicing fees and other fees as more particularly set forth in Section 19.2 hereof incurred by Lender as a result of an Event of Default by Borrower or after written notice from Borrower or any of its affiliates that an Event of Default is imminently likely to occur. Servicer shall, however, be entitled to reimbursement of costs and expenses as and to the same extent (but without duplication) as Lender is entitled thereto under the applicable provisions of the Note, this Security Instrument and the other Loan Documents. Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrower pursuant to the provisions of the Note, this Security Instrument and the other Loan Documents. Provided

Borrower shall have been given notice of Servicer's address by Lender, Borrower shall deliver to Servicer duplicate originals of all notices and other instruments which Borrower may or shall be required to deliver to Lender pursuant to the Note, this Security Instrument and the other Loan Documents (and no delivery of such notices or other instruments by Borrower shall be of any force or effect unless delivered to Lender and Servicer as provided above).

Section 21.8 Regulatory Compliance. If Lender is regulated by any state or national authority, Borrower shall furnish to Lender, within five (5) Business Days after written request (or as soon thereafter as may be commercially reasonable), all documents and information requested by Lender in connection with Lender's compliance with applicable law, regulations and/or requests by and/or orders from any such governmental authority, including, without limitation, with respect to Borrower, Principal, Guarantor, the Property, and/or the Policies.

Section 21.9 REMIC Savings Clause. Notwithstanding anything herein to the contrary, if the Loan is included in a REMIC Trust and, immediately following a release of any portion of the real property relating to the Property, the ratio of the unpaid principal balance of the Loan to the value of the remaining real property relating to the Property is greater than 125% (such value to be determined, in Lender's sole discretion, by any commercially reasonable method permitted to a REMIC Trust and it being agreed and acknowledged that such loan-to-value determination shall be based on the value of only real property and shall exclude any personal property or going-concern value, if any), the principal balance of the Loan shall be paid down by Borrower by an amount sufficient to satisfy REMIC Requirements, unless the Lender receives an opinion of counsel that the Loan will not fail to maintain its status as a "qualified mortgage" within the meaning of Section 860G(a)(3)(A) of the IRS Code as a result of the related release of lien.

ARTICLE XXII DEED OF TRUST PROVISIONS

Section 22.1 Concerning The Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this

paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 22.2 Trustee's Fees. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 22.3 Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 22.4 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 22.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

Section 22.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become

vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

ARTICLE XXIII SPECIAL UTAH PROVISIONS

Section 23.1 Principles of Construction. In the event of any inconsistencies between the terms and provisions of this Security Instrument and Article XXIII of this Security Instrument, the terms and provisions of this Article XXIII shall govern and control.

Section 23.2 Integrated Agreement. This Security Instrument and the Other Security Documents, and any related loan commitment, constitute the entire agreement between Lender and Borrower with respect to the subject matter of these agreements, and may not be altered or amended except by written agreement signed by Lender and Borrower. PURSUANT TO UTAH CODE SECTION 25-5-4, LENDER IS NOTIFIED THAT THESE AGREEMENTS ARE A FINAL EXPRESSION OF THE AGREEMENT BETWEEN BORROWER AND LENDER AND THESE AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

ARTICLE XXIV MULTIPLE BORROWER PROVISIONS

Section 24.1 Multiple Borrower Waivers. Notwithstanding the joinder of each Borrower in this Security Instrument, for the purpose of subjecting the interests of each Borrower in the Property to the lien of this Security Instrument, it is hereby acknowledged that in no event shall any Borrower be construed as a guarantor or surety of any other Borrower. In furtherance of the foregoing, each Borrower hereby agrees that:

(a) Obligation Absolute. Each Borrower hereby unconditionally waives any defense to the enforcement of this Security Instrument based on the characterization of such Borrower as a guarantor of any other Borrower and without limitation:

(1) The lien and enforceability of this Security Instrument against the interests of any Borrower in the Property shall remain in full force and effect without regard to, and shall not be affected or impaired by the following, any of which may be taken without the consent of, or notice to, any Borrower, nor shall any of the following give any Borrower any recourse or right of action against Lender:

- A. Any express or implied amendment, modification, renewal, addition, supplement, extension (including extensions beyond the original term) or acceleration of or to any of the Note, this Security Instrument or the other Loan Documents;

- B. Any exercise or non-exercise by Lender of any right or privilege under the Note, this Security Instrument or the other Loan Documents;
- C. Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to any Borrower, or any guarantor (which term shall include any other party at any time directly or contingently liable for any of a Borrower's obligations under the Note, this Security Instrument or the other Loan Documents) or any affiliate of any Borrower, or any action taken with respect to the Note, this Security Instrument or the other Loan Documents by any trustee or receiver, or by any court, in any such proceeding, whether or not such party shall have had notice or knowledge of any of the foregoing;
- D. Any release or discharge of any Borrower from its liability under any of the Note, this Security Instrument or the other Loan Documents or any release or discharge of any endorser or guarantor or of any other party at any time directly or contingently liable for the obligations secured by this Security Instrument;
- E. Any subordination, compromise, release (by operation of law or otherwise), discharge, compound, collection, or liquidation of any or all of the Property or other collateral described in any of the Note, this Security Instrument or the other Loan Documents or otherwise in any manner, or any substitution with respect thereto;
- F. Any assignment or other transfer of any of the Note, this Security Instrument or the other Loan Documents;
- G. Any acceptance of partial performance of the obligations;
- H. Any transfer or consent to the transfer of the Property or any portion thereof or any other collateral described in the Note, this Security Instrument or the other Loan Documents or otherwise; and
- I. Any bid or purchase at any sale of the Property or any other collateral described in the Note, this Security Instrument or the other Loan Documents or otherwise.

(b) Waivers. Each Borrower unconditionally waives any defense to the enforcement of this Security Instrument, except as expressly set forth herein, including:

(1) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Security Instrument;

(2) Any right to require Lender to proceed against any Borrower at any time or to proceed against or exhaust any security held by Lender at any time or to pursue any other remedy whatsoever at any time;

(3) The defense of any statute of limitations affecting the liability of any Borrower, the liability of any Borrower under the Note, this Security Instrument or the other Loan Documents, or the enforcement hereof, to the extent permitted by law;

(4) Intentionally omitted;

(5) Any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of any Borrower or any principal of any Borrower or any defect in the formation of any Borrower or any principal of any Borrower;

(6) Any defense based upon the application by any Borrower of the proceeds of the Loan for purposes other than the purposes represented by such Borrower to Lender or intended or understood by Lender or Borrower;

(7) Any defense based upon an election of remedies by Lender, including any election to proceed by judicial or nonjudicial foreclosure of any security, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, or any election of remedies, including remedies relating to real property or personal property security, which destroys or otherwise impairs the subrogation rights of any Borrower or the rights of any Borrower to proceed against any other Borrower for reimbursement, or both;

(8) Any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a principal;

(9) Any defense based upon Lender's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute;

(10) Any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code;

(11) Any duty of Lender to advise any Borrower of any information known to Lender regarding the financial condition of any Borrower and all other circumstances affecting any Borrower's ability to perform its obligations to Lender, it being agreed that each Borrower assumes the responsibility for being and keeping informed regarding such condition or any such circumstances; and

(12) Any right of subrogation, reimbursement, exoneration, contribution or indemnity, or any right to enforce any remedy which Lender now has or may hereafter have against any Borrower or any benefit of, or any right to participate in, any security now or hereafter held by Lender.

(c) Subrogation. Each Borrower understands that the exercise by Lender of certain rights and remedies may affect or eliminate a Borrower's right of subrogation against another Borrower and that such Borrower may therefore incur partially or totally non-reimbursable liability hereunder. Nevertheless, each Borrower hereby authorizes and empowers Lender, its successors, endorsees and assigns, to exercise in its or their sole discretion, any rights and remedies, or any combination thereof, which may then be available, it being the purpose and intent of each Borrower that the obligations hereunder shall be absolute, continuing, independent and unconditional under any and all circumstances. Notwithstanding any other provision of this Security Instrument to the contrary, each Borrower hereby waives and releases any claim or other rights which such Borrower may now have or hereafter acquire against any other Borrower of all or any of the obligations of any other Borrower hereunder that arise from the existence or performance of such party's obligations under this Security Instrument, the Note or any of the other Loan Documents, including any right of subrogation, reimbursement, exoneration, contribution or indemnification, any right to participate in any claim or remedy of Lender against any Borrower or any collateral which Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights.

(d) Additional Waivers. No Borrower shall be released or discharged, either in whole or in part, by Lender's failure or delay to (i) perfect or continue the perfection of any lien or security interest in any collateral which secures the obligations of any Borrower, or (ii) protect the property covered by such lien or security interest.

(e) Independent Obligations. The obligation of each Borrower is independent of the obligation of any other Borrower and, upon an Event of Default, a separate action or actions may be brought and prosecuted against any Borrower whether or not such Borrower is the alter ego of any other Borrower and whether or not such Borrower is joined therein or a separate action or actions are brought against such Borrower. Lender's rights hereunder shall not be exhausted until all of the obligations secured by this Security Instrument have been fully paid and performed.

(f) Subordination. Without limitation on the waiver and release contained in subsection (c) above:

(1) Each Borrower subordinates all present and future indebtedness owing by any other Borrower to such Borrower to the obligations at any time owing by such other Borrower to Lender under the Note and the other Loan Documents; and each Borrower subordinates to Lender all rights, remedies and liens it may have against the other Borrowers and/or under the TIC Agreement.

(2) Each Borrower agrees to make no claim against another Borrower until all obligations of such other Borrower under the Note, this Security Instrument and the other Loan Documents have been fully discharged.

(3) Each Borrower further agrees not to assign all or any part of such indebtedness unless Lender is given prior notice and such assignment is expressly made subject to the terms of this Security Instrument. If Lender so requests, (i) all instruments evidencing such indebtedness shall be duly endorsed and delivered to Lender, (ii) all security for such indebtedness shall be duly assigned and delivered to Lender, (iii) such indebtedness shall be enforced, collected and held by the Borrower as trustee for Lender and shall be paid over to Lender on account of the Loan but without reducing or affecting in any manner the liability of such Borrower under the other provisions of this Security Instrument, and (iv) the Borrower shall execute, file and record such documents and instruments and take such other action as Lender deems necessary or appropriate to perfect, preserve and enforce Lender's rights in and to such indebtedness and any security therefor. If the Borrower fails to take any such action, Lender, as attorney in fact for such Borrower, is hereby authorized to do so in the name of the Borrower. The foregoing power of attorney is coupled with an interest and cannot be revoked.

(g) Bankruptcy No Discharge; Repayments. So long as any of the obligations hereunder shall be owing to Lender, a Borrower shall not, without the prior written consent of Lender, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against any other Borrower. Each Borrower understands and acknowledges that by virtue of this Security Instrument, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to any other Borrower. As an example and not in any way of limitation, a subsequent modification of the obligations secured by this Security Instrument in any reorganization case concerning any Borrower shall not affect the obligation of any other Borrower to perform the obligations secured by this Security Instrument in accordance with its original terms. In any bankruptcy or other proceeding in which the filing of claims is required by law, a Borrower shall file all claims which such Borrower may have against any other Borrower relating to any indebtedness of any Borrower to such Borrower and shall assign to Lender all rights of such Borrower thereunder. If a Borrower does not file any such claim, Lender, as attorney in fact for such Borrower, is hereby authorized to do so in the name of such Borrower or, in Lender's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Lender's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Lender or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Lender the amount payable on such claim and, to the full extent necessary for that purpose, each Borrower hereby assigns to Lender all of such Borrower's rights to any such payments or distributions; provided, however, such Borrower's obligations hereunder shall not be satisfied except to the extent that Lender receives cash by reason of any such payment or distribution. If Lender receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Security Instrument. Notwithstanding anything to the contrary herein, the liability of each Borrower hereunder shall be reinstated and

revised, and the rights of Lender shall continue, with respect to any amount at any time paid by or on behalf of such Borrower on account of the Note, this Security Instrument or the other Loan Documents which Lender shall restore or return by reason of the bankruptcy, insolvency or reorganization of such Borrower or for any other reasons, all as though such amount had not been paid.

Section 24.2 Additional Tenant in Common Provisions.

(a) Each Borrower represents and warrants to Lender that it is a tenant in common with each of the other Borrowers. PARK AVENUE OGDEN PROPERTIES, LLC owns an undivided 69.04% tenant in common interest in the Property. CALADONIAN OGDEN PROPERTIES, LLC owns an undivided 30.96% tenant in common interest in the Property.

(b) Each Borrower waives any and all rights to commence, file or prosecute a partition of the Property, agrees not to bring any action to partition the Property or compel the sale of the Property, and waives any right to lien the Property.

(c) Each Borrower agrees that it will not modify, amend or terminate the TIC Agreement between the Borrowers without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion. Each Borrower's right to assign or transfer any interest in the Property or the TIC Agreement, including any right of first refusal or similar right, shall be subordinate and subject to all the terms and conditions of this Security Instrument. Borrower shall cause the TIC Agreement, or a memorandum thereof, to be recorded concurrently herewith. The TIC Agreement shall provide that each Borrower waives any right to partition the Property. Borrower shall give prompt notice to Lender of any default under the TIC Agreement.

(d) Each Borrower agrees that it subordinates any and all rights, remedies and liens it may have by virtue of it being a tenant in common, and for so long as the Loan is outstanding each Borrower agrees that it will not commence the exercise of any action or remedies against the other Borrowers or the Property.

(e) Each Borrower represents, warrants and covenants to Lender that no federal or state securities laws have been or will be violated in connection with the solicitation, acquisition or future transfer of each Borrower's tenant-in-common interest in the Property.

(f) Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by each Borrower herein, and the liability of each Borrower hereunder, are joint and several.

Section 24.3 Contribution.

(a) As a result of the transactions contemplated by this Security Instrument, each Borrower will benefit, directly and indirectly, from each Borrower's obligation to pay and perform the Obligations and in consideration therefore each Borrower desires to enter into an allocation and contribution agreement among themselves as set forth in this Section 24.3 to allocate such benefits among themselves and to provide a fair and equitable agreement to make

contributions among each of Borrowers in the event any payment is made by any individual Borrower hereunder to Lender (such payment being referred to herein as a "**Contribution**," and for purposes of this Section 24.3, includes any exercise of recourse by Lender against any Collateral of a Borrower and application of proceeds of such Collateral in satisfaction of such Borrower's obligations, to Lender under the Loan Documents).

(b) Each Borrower shall be liable hereunder with respect to the Obligations only for such total maximum amount (if any) that would not render its Obligations hereunder or under any of the Loan Documents subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provisions of any state law.

(c) In order to provide for a fair and equitable contribution among Borrowers in the event that any Contribution is made by an individual Borrower (a "**Funding Borrower**"), such Funding Borrower shall be entitled to a reimbursement Contribution ("**Reimbursement Contribution**") from all other Borrowers for all payments, damages and expenses incurred by that Funding Borrower in discharging any of the Obligations, in the manner and to the extent set forth in this Section 24.3.

(d) For purposes hereof, the "**Benefit Amount**" of any individual Borrower as of any date of determination shall be the net value of the benefits to such Borrower and its affiliates from extensions of credit made by Lender to (i) such Borrower and (ii) to the other Borrowers hereunder and the Loan Documents to the extent such other Borrowers have guaranteed or mortgaged their property to secure the Obligations of such Borrower to Lender.

(e) Each Borrower shall be liable to a Funding Borrower in an amount equal to the greater of (i) the (A) ratio of the Benefit Amount of such Borrower to the total amount of Obligations, multiplied by (B) the amount of Obligations paid by such Funding Borrower, or (ii) ninety-five percent (95%) of the excess of the fair saleable value of the property of such Borrower over the total liabilities of such Borrower (including the maximum amount reasonably expected to become due in respect of contingent liabilities) determined as of the date on which the payment made by a Funding Borrower is deemed made for purposes hereof (giving effect to all payments made by other Funding Borrowers as of such date in a manner to maximize the amount of such Contributions).

(f) In the event that at any time there exists more than one Funding Borrower with respect to any Contribution (in any such case, the "**Applicable Contribution**"), then Reimbursement Contributions from other Borrowers pursuant hereto shall be allocated among such Funding Borrowers in proportion to the total amount of the Contribution made for or on account of the other Borrowers by each such Funding Borrower pursuant to the Applicable Contribution. In the event that at any time any Borrower pays an amount hereunder in excess of the amount calculated pursuant to this Section 24.3 above, that Borrower shall be deemed to be a Funding Borrower to the extent of such excess and shall be entitled to a Reimbursement Contribution from the other Borrowers in accordance with the provisions of this Section.

(g) Each Borrower acknowledges that the right to Reimbursement Contribution hereunder shall constitute an asset in favor of Borrower to which such Reimbursement Contribution is owing.

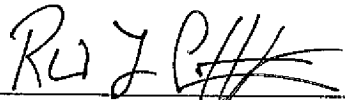
No Reimbursement Contribution payments payable by a Borrower pursuant to the terms of this Section 24.3 shall be paid until all amounts then due and payable by all of Borrowers to Lender, pursuant to the terms of the Loan Documents, are paid in full in cash. Nothing contained in this Section 24.3 shall limit or affect in any way the Obligations of any Borrower to Lender under the Note or any other Loan Documents

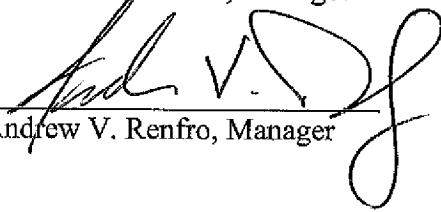
[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Borrower the day and year first above written.

BORROWER

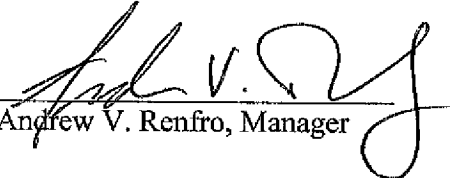
PARK AVENUE OGDEN PROPERTIES, LLC,
a Delaware limited liability company

By: 
Richard T. Callister, Manager

By: 
Andrew V. Renfro, Manager

CALADONIAN OGDEN PROPERTIES, LLC, a
Delaware limited liability company

By: _____
Hal D. Renfro, Manager

By: 
Andrew V. Renfro, Manager

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed
by Borrower the day and year first above written.

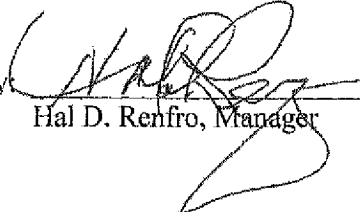
BORROWER

PARK AVENUE OGDEN PROPERTIES, LLC,
a Delaware limited liability company

By: _____
Richard T. Callister, Manager

By: _____
Andrew V. Renfro, Manager

CALADONIAN OGDEN PROPERTIES, LLC, a
Delaware limited liability company

By:  _____
Hal D. Renfro, Manager

By: _____
Andrew V. Renfro, Manager

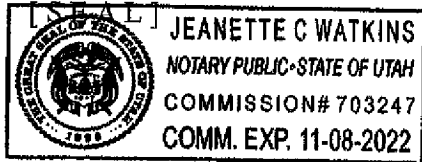
ACKNOWLEDGMENTS

STATE OF UTAH

§
§
§

COUNTY OF Salt Lake

The foregoing instrument was ACKNOWLEDGED before me this 15th day of April, 2021, by Richard T. Callister, the Manager of PARK AVENUE OGDEN PROPERTIES, LLC, a Delaware limited liability company, on behalf of said entity.



Jeanette C Watkins
Notary Public, State of Utah

Jeanette C Watkins
(Printed Name of Notary Public)

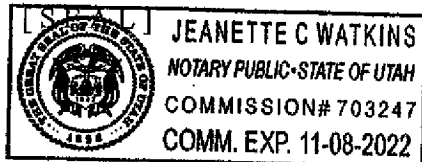
My Commission Expires: 11-8-2022

STATE OF UTAH

§
§
§

COUNTY OF Salt Lake

The foregoing instrument was ACKNOWLEDGED before me this 15th day of April, 2021, by Andrew V. Renfro, the Manager of PARK AVENUE OGDEN PROPERTIES, LLC, a Delaware limited liability company, on behalf of said entity.



Jeanette C Watkins
Notary Public, State of Utah

Jeanette C Watkins
(Printed Name of Notary Public)

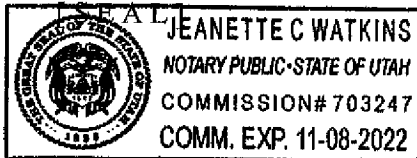
My Commission Expires: 11-8-2022

STATE OF UTAH

§
§
§

COUNTY OF Salt Lake

The foregoing instrument was ACKNOWLEDGED before me this 15th day of April, 2021, by Andrew V. Renfro, the Manager of CALADONIAN OGDEN PROPERTIES, LLC, a Delaware limited liability company, on behalf of said entity.



Jeanette C Watkins
Notary Public, State of Utah

Jeanette C Watkins
(Printed Name of Notary Public)

My Commission Expires: 11-8-2022

ACKNOWLEDGEMENTS
(continued)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Diego } s.s.

On Apr. 15th 2021 before me, Shizuka Coit. Notary Public
Name of Notary Public, Title

Personally appeared Hal D. Renfro
Name of Signer (1)

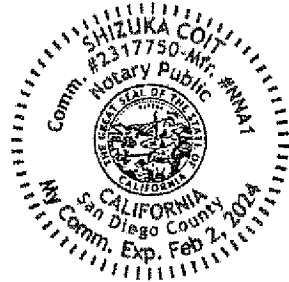
Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~, they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public



Seal

EXHIBIT A
Legal Description

Parcel 1:

Part of Lots 1, 2, 8, 9, and 10 of Block 26, Plat "A", Ogden City survey: Beginning at the Northeast corner of Block said Block 26, and running thence South 00°58'00" West along the West line of Adams Avenue 469.00 feet; thence North 89°02'00" West 155.00 feet; thence South 0°58'00" West 0.58 feet; thence North 89°02'00" West 18.00 feet; thence North 00°58'00" East 141.08 feet; thence North 89°02'00" West 223.58 feet; thence North 00°58'00" East 180.50 feet; thence South 89°02'00" East 23.40 feet; thence South 00°58'00" West 18.00 feet; thence South 89°02'00" East 128.41 feet; thence North 00°58'00" East 36.00 feet; thence North 62°21'40" East 25.06 feet; thence North 00°58'00" East 117.94 feet (North 00°28'00" East 118.00 feet by record) to the Southerly line of 24th Street; and thence South 89°03'01" East 222.77 feet (South 89°02'00" East 222.78 feet by record) along the South line of said street to the point of beginning.

Parcel 1A:

Together with an easement for the right of ingress and egress from Parcel 1 (shown above) to 25th Street located in a part of Lot 2, Block 26, Plat "A", Ogden City Survey as disclosed by that certain Special Warranty Deed recorded May 6, 1970 as Entry No. 534699 in Book 940 at Page 505::

Beginning on the Easterly side thereof at a point the following courses and distances, Southerly and Westerly from the Northeast corner of Block 26, at intersection of the Southerly side of 24th Street with the Westerly side of Adams Avenue South 00°58'00" West 469.00 feet and North 89°02'00" West 149.50 feet; thence Southerly, Westerly and Northerly the following courses and distances: South 00°58'00" West 198.50 feet to the Northerly side of 25th Street; thence North 89°02'00" West 20.00 feet along the Northerly side of 25th Street; thence North 00°58'00" East 150.00 feet; thence North 89°02'00" West 5.50 feet; thence North 00°58'00" East 130.50 feet; thence North 89°02'00" West 4.50 feet; thence North 00°58'00" East 24.00 feet; thence North 56°49'10" West 33.77 feet; thence Easterly, Southerly and Easterly the following courses and distances along property line of "Ramada Inn"; thence South 89°02'00" East 53.07 feet; thence South 00°58'00" West 124.00 feet; thence South 89°02'00" East 5.50 feet to the point and place of beginning.

Parcel 1B:

Together with an easement for the right of ingress and egress from Parcel 1 (shown above) to the joint parking area located in a part of Lots 8 and 9, Block 26, Plat "A", Ogden City Survey as disclosed by that certain Special Warranty Deed recorded May 6, 1970 as Entry No. 534699 in Book 940 at Page 505:

Beginning at the Northeast corner thereof, the following courses and distances, Westerly and Southerly from the Northeast corner of Block 26 at intersection of the Southerly side of 24th

Street with the Westerly side of Adams Avenue; thence North $89^{\circ}02'00''$ West 222.78 feet; thence South $00^{\circ}58'00''$ West 118.00 feet; thence South $62^{\circ}21'40''$ West 25.06 feet; thence Southerly, Westerly, Southerly, Westerly, Northerly and Easterly the following courses and distances: South $00^{\circ}58'00''$ West 18.00 feet; thence North $89^{\circ}02'00''$ West 44.66 feet; thence South $00^{\circ}58'00''$ West 18.00 feet; thence North $89^{\circ}02'00''$ West 20.00 feet; thence North $00^{\circ}58'00''$ East 18.00 feet; thence North $89^{\circ}02'00''$ West 43.75 feet; thence South $00^{\circ}58'00''$ West 18.00 feet; thence North $89^{\circ}02'00''$ West 20 feet; thence North $00^{\circ}58'00''$ East 36.00 feet; thence South $89^{\circ}02'00''$ East 128.41 feet to the point and place of beginning.