

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): October 15, 2021

CBL & ASSOCIATES PROPERTIES, INC.

CBL & ASSOCIATES LIMITED PARTNERSHIP

(Exact Name of Registrant as Specified in its Charter)

Delaware
Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

1-12494
333-182515-01

(Commission File Number)

62-1545718
62-1542285

(I.R.S. Employer Identification No.)

2030 Hamilton Place Blvd., Suite 500, Chattanooga, TN 37421-6000

(Address of principal executive office, including zip code)

423-855-0001

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered under Section 12(b) of the Act:

Title of each Class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	CBLAQ	*
7.375% Series D Cumulative Redeemable Preferred Stock, \$0.01 par value (represented by depositary shares each representing a 1/10 th fractional share)	CBLDQ	*
6.625% Series E Cumulative Redeemable Preferred Stock, \$0.01 par value (represented by depositary shares each representing a 1/10 th fractional share)	CBLEQ	*

*On November 2, 2020, the NYSE announced that (i) it had suspended trading in the Company's stock and (ii) it had determined to commence proceedings to delist the Company's common stock, as well as the depositary shares each representing a 1/10th fractional share of the Company's 7.375% Series D Cumulative Redeemable Preferred Stock ("Series D Preferred Stock") and the depositary shares each representing a 1/10th fractional share of the Company's 6.625% Series E Cumulative Redeemable Preferred Stock ("Series E Preferred Stock"), due to such securities no longer being suitable for listing based on "abnormally low" trading price levels, pursuant to Section 802.01D of the NYSE Listed Company Manual. Since November 3, 2020, the Company's common stock and such depositary shares are currently trading on the OTC Markets, operated by the OTC Markets Group, Inc., under the respective trading symbols listed in the preceding table.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

ITEM 7.01 Regulation FD Disclosure

As previously disclosed, beginning on November 1, 2020, CBL & Associates Properties, Inc. (the “REIT”), CBL & Associates Limited Partnership (the “Operating Partnership”), the majority owned subsidiary of the REIT (collectively, the Operating Partnership and the REIT are referred to as the “Company”), and certain of its direct and indirect subsidiaries filed voluntary petitions (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). During the pendency of the Chapter 11 Cases, the Company is operating its business as debtors-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code.

Also, as previously disclosed, (i) on April 15, 2021, the Company filed an amended Chapter 11 plan of reorganization (the “Proposed Plan”) and accompanying disclosure statement (the “Proposed Disclosure Statement”) with the Bankruptcy Court; (ii) on May 18, 2021, the Company filed the second amended Chapter 11 plan of reorganization and accompanying disclosure statement, as further amended on May 19, 2021; and (iii) on May 25, 2021, the Company filed the third amended Chapter 11 plan of reorganization (the “Amended Plan”) and accompanying disclosure statement (the “Disclosure Statement”), to implement the restructuring transactions. Capitalized terms used but not otherwise defined in this Current Report on Form 8-K have the meanings ascribed to them in the Amended Plan. In addition, on May 26, 2021, the Bankruptcy Court entered an order that among other things, approved the Company’s Disclosure Statement and established dates and deadlines related to solicitation of, voting on, and confirmation of the Amended Plan.

Also, as previously disclosed, on July 19, 2021, the Company filed with the Bankruptcy Court (i) Notice of Classification of Property-Level Guarantee Claims (the “Classification Notice”); and (ii) a supplement to the Amended Plan, which includes certain documents related to the Amended Plan and referenced therein, including, among other things: the (i) forms of organizational documents of the Operating Partnership, the REIT, the New Bank Claim Borrower and the New Notes Issuer, each to become effective on the Effective Date, (ii) form of Registration Rights Agreement, (iii) schedules of retained causes of action and rejected contracts, (iv) form of New Notes Indenture, (v) form of New Convertible Notes Indenture, (vi) form of Collateral Agency and Intercreditor Agreement Regarding Lien-Sharing Provisions, (vii) term sheet for Exit Credit Facility, and (viii) term sheet for New Stock Incentive Plan..

Also, as previously disclosed, on July 21, 2021, the Company filed with the Bankruptcy Court a notice of a further supplement to the Amended Plan, which included certain documents related to the Amended Plan and referenced therein, including, among other things: the (i) Restructuring Transaction Steps, (ii) revised form of New Notes Indenture, (iii) revised form of New Convertible Notes Indenture and (vi) revised form of Collateral Agency and Intercreditor Agreement Regarding Lien-Sharing Provisions.

Also, as previously disclosed, on July 23, 2021, the Company filed with the Bankruptcy Court a notice of a second supplement to the Amended Plan (the “Second Amended Plan Supplement”), which included certain documents related to the Second Amended Plan Supplement and referenced therein, including, among other things: a (i) form of Exit Credit Facility, (ii) revised form of New Convertible Notes Indenture and (iii) revised form of Collateral Agency and Intercreditor Agreement Regarding Lien-Sharing Provisions.

Also, as previously disclosed, on August 9, 2021, the Company filed with the Bankruptcy Court (a) on August 9, 2021, a third amended chapter 11 plan of reorganization with technical modifications (the “Third Amended Chapter 11 Plan (with technical modifications)”) and (b) on August 10, 2021, a notice of a third supplement to the Amended Plan (the “Third Amended Plan Supplement”), which included certain documents related to the Third Amended Plan Supplement and referenced therein, including, among other things: (i) a revised form of New Convertible Notes Indenture, (ii) a revised form of New Notes Indenture, and (iii) certain information regarding members of the New Board, in accordance with section 1129(a)(5) of the Bankruptcy Code.

Also, as previously disclosed, on August 11, 2021, the Bankruptcy Court entered an order, Docket No. 1397 (the “Confirmation Order”) confirming the Third Amended Chapter 11 Plan (with technical modifications).

Also, the Company filed with the Bankruptcy Court on October 15, 2021, a notice of a fourth supplement to the Amended Plan (the “Fourth Amended Plan Supplement”), which included certain documents related to the Fourth Amended Plan Supplement and referenced therein, including, among other things: (i) a revised form of Exit Credit Facility, (ii) a revised form of New Notes Indenture and (iii) a revised form of New Convertible Notes Indenture.

The Third Amended Chapter 11 Plan (with technical modifications), the Fourth Amended Plan Supplement, as well as Bankruptcy Court filings and other information related to the Chapter 11 Cases, are or will be available at a website administered by the Company’s noticing and claims agent, Epiq Corporate Restructuring, LLC, at <https://dm.epiq11.com/case/cblproperties/info>.

The foregoing description of the Fourth Amended Plan Supplement does not purport to be complete and is qualified in its entirety by reference to the full text of the Notice of Filing of Fourth Amended Plan Supplement, which is filed as Exhibit 99.1 hereto, and each document attached thereto, which are filed as Exhibit 99.2 hereto, Exhibit 99.3 hereto and Exhibit 99.4 hereto. Each of Exhibit 99.1, Exhibit 99.2, Exhibit 99.3 and Exhibit 99.4 is incorporated herein by reference.

In accordance with General Instruction B.2 of Form 8-K, the information being furnished under this Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, Exhibit 99.2, Exhibit 99.3 and Exhibit 99.4, shall not be deemed to be “filed” for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any registration statement or other document filed by the Company under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing.

This communication contains forward-looking statements, including, in particular, statements about the terms and the provisions of the Amended Plan and the contemplated chapter 11 reorganization. These statements are based on the Company’s current assumptions, expectations and projections about future events. Although the Company believes that the expectations reflected in these forward-looking statements are reasonable, the Company can give no assurance that the expectations will prove to be correct.

ITEM 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description
99.1	Notice of Filing of Fourth Amended Plan Supplement, dated as of October 15, 2021
99.2	Form of Exit Credit Facility
99.3	Form of New Notes Indenture
99.4	Form of New Convertible Notes Indenture
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CBL & ASSOCIATES PROPERTIES, INC.

/s/ Farzana Khaleel

Farzana Khaleel
Executive Vice President -
Chief Financial Officer and Treasurer

CBL & ASSOCIATES LIMITED PARTNERSHIP

By: CBL HOLDINGS I, INC., its general partner

/s/ Farzana Khaleel

Farzana Khaleel
Executive Vice President -
Chief Financial Officer and Treasurer

Date: October 18, 2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
	§	
CBL & ASSOCIATES	§	
PROPERTIES, INC., et al.,	§	Case No. 20-35226 (DRJ)
	§	
Debtors. ¹	§	(Jointly Administered)
	§	Re: Dkt Nos. 1163, 1315, 1322, 1324, 1380

**NOTICE OF FILING OF FOURTH AMENDED PLAN
SUPPLEMENT FOR THIRD AMENDED JOINT CHAPTER 11 PLAN
OF CBL & ASSOCIATES PROPERTIES, INC. AND ITS AFFILIATED DEBTORS**

PLEASE TAKE NOTICE THAT:

1. On July 19, 2021, CBL & Associates Properties, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), filed the *Notice of Filing of Plan Supplement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors* (Docket No. 1315), on July 21, 2021, the Debtors filed the *Notice of Filing of Amended Plan Supplement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors* (Docket No. 1322), on July 23, 2021, the Debtors filed the *Notice of Filing Second Amended Plan Supplement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors* (Docket No. 1324), and, on August 10, 2021, the Debtors filed the *Notice of Filing Third Amended Plan Supplement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors* (Docket No.

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/CBLProperties>. The Debtors’ service address for the purposes of these chapter 11 cases is 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421.

1380) (collectively, and as may be amended or modified, the “**Plan Supplement**”) in connection with, and in accordance with, the (a) *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications)*, dated August 9, 2021 (Docket No. 1369) (as may be amended, modified, or supplemented, the “**Plan**”)², (b) *Amended Order (I) Approving Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan, (V) Approving Notice Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (VI) Granting Related Relief* (Docket No. 1168), and (c) *Disclosure Statement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors*, dated May 25, 2021 (Docket No. 1164).

2. The Plan Supplement is hereby amended as follows:

Exhibit	Plan Supplement Document	Amendment
Exhibit M	New Notes Indenture	Replaced in its entirety with the document attached hereto as Exhibit M . A redline showing the changes is attached hereto as Exhibit M-1 .
Exhibit N	New Convertible Notes Indenture	Replaced in its entirety with the document attached hereto as Exhibit N . A redline showing the changes is attached hereto as Exhibit N-1 .
Exhibit P	Exit Credit Facility	Replaced in its entirety with the document attached hereto as Exhibit P . A redline showing the changes is attached hereto as Exhibit P-1 .

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

3. The documents contained in the Plan Supplement, including this amendment, are integral to, and are considered part of, the Plan, which was confirmed and approved by the Bankruptcy Court on August 11, 2021 pursuant to the *Proposed Findings of Fact, Conclusions of Law, and Order (I) Confirming Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors and (II) Granting Related Relief* (Docket No. 1397) (the “**Confirmation Order**”).

4. As of the date hereof, the Debtors are still engaged in negotiations with the Required Consenting Creditors and other parties in interest with respect to the terms of the documents contained in the Plan Supplement, which are subject in all respects to the consent rights set forth in the Plan and Restructuring Support Agreement. Consequently, the documents contained in the Plan Supplement are not final and reflect the latest drafts subject to ongoing negotiation. All parties’ applicable rights are reserved with respect to the form of documents filed herewith. Subject to the terms and conditions of the Plan, the Restructuring Support Agreement, and the Confirmation Order, the Debtors reserve all rights to amend, revise, or supplement the Plan Supplement at any time before the Effective Date, or any such other date as may be permitted by the Plan or by order of the Bankruptcy Court.

5. Copies of all documents filed in these chapter 11 cases, including copies of the exhibits contained in the Plan Supplement, are available free of charge by visiting dm.epiq11.com/case/cblproperties/info. You may also obtain copies of the pleadings by visiting the Bankruptcy Court’s website at <https://ecf.txsb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: October 15, 2021
Houston, Texas

/s/ Alfredo R. Pérez

WEIL, GOTSHAL & MANGES LLP

Alfredo R. Pérez (15776275)
700 Louisiana Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

– and –

WEIL, GOTSHAL & MANGES LLP
Ray C. Schrock, P.C. (admitted *pro hac vice*)
Garrett A. Fail (admitted *pro hac vice*)
Moshe A. Fink (admitted *pro hac vice*)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*Attorneys for Debtors
and Debtors in Possession*

Certificate of Service

I hereby certify that on October 15, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez

Alfredo R. Pérez

Exhibit P

Exit Credit Facility

AMENDED AND RESTATED CREDIT AGREEMENT¹

Dated as of [●], 2021

by and among

CBL & ASSOCIATES HOLDCO I, LLC,
as Borrower,

CBL & ASSOCIATES PROPERTIES, INC.,
as Company, solely for the limited purposes set
forth in Section 13.22,

CBL & ASSOCIATES LIMITED PARTNERSHIP,
as Parent, solely for the limited purposes set forth in
Section 13.22,

THE FINANCIAL INSTITUTIONS PARTY HERETO
AND THEIR ASSIGNEES UNDER SECTION 13.6,
as Lenders,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent,

¹ This loan document remains subject to negotiation, revision, and approval of the Company, the Required Consenting Bank Lenders, and the Required Consenting Noteholders (as defined in the Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications), dated August 9, 2021 (Docket No. 1369).

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EXHIBIT L	Form of Compliance Certificate
EXHIBIT M	Forms of U.S. Tax Compliance Certificates
EXHIBIT N	Form of Property Management Contract Assignment

THIS AMENDED AND RESTATED CREDIT AGREEMENT (this “**Agreement**”) dated as of [●], 2021 by and among CBL & ASSOCIATES HOLDCO I, LLC, a limited liability company organized under the laws of the State of Delaware (the “**Borrower**”), CBL & ASSOCIATES PROPERTIES, INC., a corporation organized under the laws of the State of Delaware (the “**Company**”), joining in the execution of this Agreement solely for the limited purposes set forth in Section 13.22, CBL & ASSOCIATES LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Delaware (the “**Parent**”), joining in the execution of this Agreement solely for the limited purposes set forth in Section 13.22, each of the financial institutions initially a signatory hereto together with their successors and assignees under Section 13.6 (the “**Lenders**”) and WELLS FARGO BANK, NATIONAL ASSOCIATION (the “**Administrative Agent**”).

WHEREAS, on [●], 2021, CBL & Associates Properties, Inc., a corporation incorporated under the Laws of Delaware (“**Company**”) and certain of its Subsidiaries (collectively, the “**Debtors**”) filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under Chapter 11 of the Bankruptcy Code (the cases of each of the Company, Parent and each other Debtor, collectively the “**Chapter 11 Cases**”) and have continued in the possession of their assets and the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, Parent entered into that certain Credit Agreement, dated as of January 30, 2019 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “**Existing Credit Agreement**”), among the Parent (the “**Existing Borrower**”), Company, each lender from time to time party thereto (the “**Existing Lenders**”) and Wells Fargo Bank, National Association, as administrative agent pursuant to which the Existing Lenders made a term loan facility and revolving facility available to the Existing Borrower.

WHEREAS, on [●], 2021, the Bankruptcy Court entered an order confirming the plan of reorganization proposed by the Loan Parties under chapter 11 of the Bankruptcy Code (as it may be modified, amended or supplemented from time to time, the “**Chapter 11 Plan**”), which provided for, among other things, the refinancing of the obligations under the Existing Credit Agreement with the proceeds of an exit credit facility.

WHEREAS, in connection with the foregoing, the Administrative Agent and the Lenders desire to continue certain loans under the Existing Credit Agreement as a term loan facility denominated in U.S. Dollars in an aggregate principal amount not to exceed \$883,700,000, on the terms and conditions contained herein, which is a debt restructuring and rearrangement of the debt and other obligations of the Debtors arising under the Existing Credit Agreement and assignment and continuation of the liens and mortgages thereunder through an amendment and restatement thereof, which has been assumed by the Borrower and guaranteed by Parent on a limited basis and the Subsidiary Guarantors, in each case pursuant to the Chapter 11 Plan; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

Article I. Definitions

Section 1.1. Definitions.

In addition to terms defined elsewhere herein, the following terms shall have the following meanings for the purposes of this Agreement:

“**Accession Agreement**” means an Accession Agreement substantially in the form of Annex I to the Guaranty.

“**Additional Costs**” has the meaning given that term in Section 5.1(b).

“**Additional Collateral Properties**” means each Property set forth on Schedule 4.1(a)(2) as of the Effective Date.

“**Administrative Agent**” means Wells Fargo, including its branches and affiliates, as contractual representative of the Lenders under this Agreement, or any successor Administrative Agent appointed pursuant to Section 12.8.

“**Administrative Questionnaire**” means the Administrative Questionnaire completed by each Lender and delivered to the Administrative Agent in a form supplied by the Administrative Agent to the Lenders from time to time.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Unless explicitly set forth to the contrary, a reference to an “Affiliate” means an Affiliate of the Borrower. In no event shall the Administrative Agent or any Lender be deemed to be an Affiliate of the Borrower, the Company, the Parent or any other Loan Party solely as a result of being the Administrative Agent or a Lender hereunder.

“**Affiliated Lender**” means, collectively, (a) any Affiliate of the Borrower, the Parent or the Company (other than the Borrower, the Parent and the Company and their respective Subsidiaries) or (b) any Lender which owns, directly or indirectly, in the aggregate (individually or collectively with its Affiliates) greater than 10% of the Equity Interests in the Borrower, the Parent or the Company; provided, however, that any entity that is majority owned or controlled by any Person who, prior to the Effective Date, sat on the board of directors, or was a senior executive officer, of the Borrower, Company or Parent or Senior Officer shall not be permitted to be an Affiliated Lender (or a Lender) hereunder.

“**Affiliated Lender Assignment Agreement**” has the meaning assigned to such term in Section 13.6.

“**Affiliated Lender Cap**” has the meaning assigned to such term in Section 13.6(h).

“**Aggregate Outstanding Balance**” means, as of any date of determination, the aggregate principal balance of all Loans.

“**Agreement Date**” means the date as of which this Agreement is dated.

“**Allocated Loan Amount**” means (a) with respect to each of the Properties set forth on Schedule 4.1(a) on the Effective Date, the amount set forth opposite the name of such Property on Schedule 4.1(a) and (b) with respect to any Property added as a Collateral Property after the Effective Date, an amount reasonably determined by the Administrative Agent in its reasonable discretion in consultation with the Borrower.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

“**Anti-Money Laundering Laws**” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules related to terrorism financing, money laundering, any predicate crime to money laundering or any financial record keeping, including any applicable provision of the PATRIOT Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“**Applicable Law**” means all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case having the force of law.

“**Applicable Loan Party**” has the meaning given that term in Section 7.1(cc)(ix).

“**Applicable Margin**” means a per annum rate equal to, (a) with respect to LIBOR Loans, 2.75% and (b) with respect to Base Rate Loans, 1.75%.

“**Appraisal**” means, with respect to any Property, an M.A.I. appraisal commissioned by and addressed to the Administrative Agent (acceptable to the Administrative Agent as to form, substance and appraisal date), prepared by a professional appraiser acceptable to the Administrative Agent, having at least the minimum qualifications required under Applicable Law governing the Administrative Agent and the Lenders, including, without limitation, FIRREA, and determining both the “as is” market value of such Property as between a willing buyer and a willing seller and the “stabilized value” of such Property.

“**Appraised Value**” means, with respect to any Property, the “as is” market value of such Property as reflected in the most recent Appraisal of such Property.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

“**Assignment and Assumption**” means an Assignment and Assumption Agreement entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by [Section 13.6](#)), and accepted by the Administrative Agent, in substantially the form of [Exhibit A](#) or any other form approved by the Administrative Agent.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to [Section 5.2\(b\)\(iv\)](#).

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bankruptcy Code**” means 11 U.S.C. §§ 101 et seq.

“**Base Rate**” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the LIBOR Market Index Rate plus 1.0% (subject to the interest rate floors set forth in the definition of “LIBOR”). Each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Market Index Rate (provided that clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable).

“**Base Rate Loan**” means a Term Loan (or any portion thereof) bearing interest at a rate based on the Base Rate.

“**Benchmark**” means, initially, USD LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to [Section 5.2\(b\)\(i\)](#).

“**Benchmark Replacement**” means, for any Available Tenor,

(a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment;

(2) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;

(3) the sum of: (A) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment; or

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment; or

(c) with respect to any Other Benchmark Rate Election, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment;

provided that, (i) in the case of clause (a)(1), if the Administrative Agent decides that Term SOFR is not administratively feasible for the Administrative Agent, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3), or clause (b) or clause (c) of this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1), (a)(2) and (b) of the definition of “Benchmark Replacement,” an amount equal to 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration;

(2) for purposes of clause (a)(3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities; and

(3) for purposes of clause (c) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Benchmark Replacement Date**” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(c) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided the Term SOFR Notice to the Lenders and the Borrower pursuant to Section 5.2(b)(i)(B); or

(d) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Requisite Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.2(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.2(b).

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Arrangement**” means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

“**Borrower**” has the meaning set forth in the introductory paragraph hereof and shall include the Borrower’s successors and permitted assigns.

“**Business Day**” means (a) for all purposes other than as set forth in clause (b) below, any day (other than a Saturday, Sunday or legal holiday) on which banks in New York, New York are open for the conduct of their commercial banking business, and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBOR Loan, or any Base Rate Loan as to which the interest rate is determined by reference to LIBOR, any day that is a Business Day described in clause (a) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market. Unless specifically referenced in this Agreement as a Business Day, all references to “days” shall be to calendar days.

“**Capital Expenditures**” means capitalized expenditures, including deferred maintenance, tenant allowances and redevelopment costs excluding (i) any such expenditures funded by the Capex Reserve Account, (ii) the amount of any cash reimbursements received from a Person that is not an Affiliate of a Loan Party, to reimburse such Loan Party for such expenditures and (iii)

any such expenditures made with respect to the Hotel Mayfaire outparcel of the Mayfaire Towne Center, all determined on a cash basis.

“**Capex Reserve Account**” has the meaning set forth in Section 8.13.

“**Capitalized Lease Obligations**” means obligations under a lease (or other arrangement conveying the right to use property) to pay rent or other amounts, in each case that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP as of the applicable date.

“**Cash Equivalents**” means: (a) securities issued, guaranteed or insured by the United States of America or any of its agencies with maturities of not more than one (1) year from the date acquired; (b) certificates of deposit with maturities of not more than one (1) year from the date acquired issued by a United States federal or state chartered commercial bank of recognized standing, or a commercial bank organized under the laws of any other country which is a member of the Organisation for Economic Cooperation and Development, or a political subdivision of any such country, acting through a branch or agency, which bank has capital and unimpaired surplus in excess of \$500,000,000 and which bank or its holding company has a short-term commercial paper rating of at least A-2 or the equivalent by S&P or at least P-2 or the equivalent by Moody’s; (c) reverse repurchase agreements with terms of not more than seven (7) days from the date acquired, for securities of the type described in clause (a) above and entered into only with commercial banks having the qualifications described in clause (b) above; (d) commercial paper issued by any Person incorporated under the laws of the United States of America or any State thereof and rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody’s, in each case with maturities of not more than one (1) year from the date acquired; and (e) investments in money market funds registered under the Investment Company Act of 1940, which have net assets of at least \$500,000,000 and at least eighty-five percent (85%) of whose assets consist of securities and other obligations of the type described in clauses (a) through (d) above.

“**Casualty/Condemnation Event**” has the meaning given that term in Section 8.5.

“**Chapter 11 Case**” has the meaning set forth in the recitals hereto.

“**Collateral**” means any real or personal property directly or indirectly securing any of the Obligations or any other obligation of a Person under or in respect of any Loan Document to which it is a party, and includes, without limitation, all “Property,” “Leases,” “Rents” and “Collateral” (or other similar term) under and as defined in the Collateral Agreement, any Security Deed, all “Management Agreements” (or other similar term) as defined in any Property Management Contract Assignment, and all other property subject to a Lien created by a Security Document.

“**Collateral Agreement**” means that certain Pledge and Collateral Agreement, dated as of the date hereof, by and among the Borrower, the Subsidiary Grantors and the Administrative Agent.

“**Collateral Joinder Agreement**” means a joinder agreement to the Collateral Agreement executed and delivered by an “Additional Grantor” (as defined in the Collateral Agreement) pursuant to Section 7.17 of the Collateral Agreement.

“**Collateral Properties**” means, collectively, (a) each Property set forth on Schedule 4.1(a) as of the Effective Date (each, an “**Initial Collateral Property**”) and (b) each other Property added as a Collateral Property from time to time pursuant to Section 4.1.

“**Commodity Exchange Act**” means the Commodity Exchange Act, 7 U.S.C. § 1 et seq.

“**Company**” has the meaning set forth in the recitals hereto.

“**Compliance Certificate**” has the meaning given that term in Section 9.3.

“**Confirmation Order**” has the meaning given that term in Section 6.1(a)(xviii)(x).

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Continue**”, “**Continuation**” and “**Continued**” each refers to the continuation of a LIBOR Loan from one Interest Period to another Interest Period pursuant to Section 2.10.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Convert**”, “**Conversion**” and “**Converted**” each refers to the conversion of a Loan of one Type into a Loan of another Type pursuant to Section 2.11.

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“**Debt Rating**” means, as of any date of determination, the ratings as determined by S&P and Moody’s of the Company’s Index Debt.

“**Debtor Relief Laws**” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement,

receivership, insolvency, reorganization, or similar Applicable Laws relating to the relief of debtors in the United States of America or other applicable jurisdictions from time to time in effect.

“**Debtors**” has the meaning set forth in the recitals hereto.

“**Debt Fund Affiliate**” means an Affiliated Lender that is a bona fide debt fund or an investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business and which Affiliated Lender does not own, directly or indirectly, in the aggregate (individually or collectively with its Affiliates) greater than 10% of the Equity Interests in the Borrower, the Parent or the Company and with respect to which none of the Borrower, the Parent or the Company or any Affiliate of the Borrower, the Parent or the Company makes investment decisions or has the power, directly or indirectly, to direct or cause the direction of such Affiliated Lender’s investment decisions.

“**Debt Yield Ratio**” means, as of any date of determination, the ratio, expressed as a percentage, of (a) the MCASH NOI on a trailing four (4) fiscal quarter basis as of the last day of the most recently completed fiscal quarter for which financial statements are required to be delivered pursuant to Section 9.1 or Section 9.2, as applicable, to (b) the Aggregate Outstanding Balance as of such date.

“**Default**” means any of the events specified in Section 11.1, whether or not there has been satisfied any requirement for the giving of notice, the lapse of time, or both.

“**Defaulting Lender**” means, subject to Section 3.9(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action;

provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.9(f)) upon delivery of written notice of such determination to the Borrower and each Lender.

“**Derivatives Contract**” means a “swap agreement” as defined in Section 101 of the Bankruptcy Code.

“**Derivatives Termination Value**” means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement or provision relating thereto, (a) for any date on or after the date such Derivatives Contracts have been terminated or closed out, the termination amount or value determined in accordance therewith, and (b) for any date prior to the date such Derivatives Contracts have been terminated or closed out, the then-current mark-to-market value for such Derivatives Contracts, determined based upon one or more mid-market quotations or estimates provided by any recognized dealer in Derivatives Contracts (which may include the Administrative Agent, any Lender or any Affiliate of any of them).

“**Dividing Person**” has the meaning assigned to it in the definition of “Division.”

“**Division**” means the division of the assets, liabilities and/or obligations of a Person (the “**Dividing Person**”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“**Division Successor**” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“**Dollars**” or “**\$**” means the lawful currency of the United States of America.

“**Early Opt-in Election**” means,

(a) with respect to a Benchmark with respect to any Obligations, interest, fees, commissions or other amounts denominated in Dollars or calculated with respect thereto, if such Benchmark is USD LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least

five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders; and

(b) with respect to a Benchmark with respect to any Obligations, interest, fees, commissions or other amounts denominated in any currency other than Dollars or calculated with respect thereto, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding syndicated credit facilities denominated in such currency at such time contain (as a result of amendment or as originally executed) a new benchmark rate to replace such Benchmark, and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from such Benchmark and the provision by the Administrative Agent of written notice of such election to the Lenders.

“**ECF Calculation Certificate**” means, a certificate that sets forth the amount of Excess Cash Flow for the relevant Excess Cash Flow Period, in form and substance reasonably satisfactory to the Administrative Agent.

“**ECF Calculation Date**” means March 1st and September 1st in any fiscal year

“**ECF NOI**” means, for any Excess Cash Flow Period, an amount equal to the aggregate MCASH NOI determined based on cash received that is attributable to the Collateral Properties (including Additional Collateral Properties).

“**ECF NOI (Additional Collateral Properties)**” means, for any Excess Cash Flow Period, an amount equal to the aggregate MCASH NOI determined based on cash received that is attributable to the Additional Collateral Properties, less the Imputed Base Management Fee-Additional Collateral Properties.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Effective Date**” means the later of (a) the Agreement Date and (b) the date on which all of the conditions precedent set forth in Section 6.1 shall have been fulfilled or waived in accordance with the provisions of Section 13.7.

“**Eligible Assignee**” means any Person that meets the requirements to be an assignee under Section 13.6(b)(iii), Section 13.6(b)(v) and Section 13.6(b)(vi) (subject to such consents, if any, as may be required under Section 13.6(b)(iii)); provided, however, that notwithstanding the foregoing, Eligible Assignee shall include Affiliated Lenders subject to the provisions of Section 13.6(h).

“**Eligible Property**” means a Property which satisfies all of the following requirements as confirmed by the Administrative Agent: (a) such Property is wholly owned in fee simple (or with the consent of the Requisite Lenders, leased under a Ground Lease) by the Borrower or a Subsidiary Grantor; (b) such Property is located in a State of the United States of America or in the District of Columbia; (c) neither such Property, nor any interest of the Borrower or any Subsidiary therein, nor, if such Property is owned by a Subsidiary, any of the Borrower’s direct or indirect ownership interest in such Subsidiary, is subject to (i) any Lien other than Permitted Liens or (ii) any Negative Pledge; (d) regardless of whether such Property is owned (or with the consent of the Requisite Lenders, leased under a Ground Lease) by the Borrower or a Subsidiary Grantor, the Borrower has the right directly, or indirectly through a Subsidiary Grantor, to take the following actions without the need to obtain the consent of any Person: (i) to create Liens on such Property as security for Indebtedness of the Borrower or such Subsidiary Grantor, as applicable, and (ii) to sell, transfer or otherwise dispose of such Property; (e) to the Borrower’s knowledge, such Property is free of all structural defects or major architectural deficiencies, title defects, environmental conditions or other adverse matters except for defects, deficiencies, conditions or other matters individually or collectively which are not material to the profitable operation of such Property; and (f) if (i) such Property is leased by the Borrower or a Subsidiary Grantor pursuant to a Ground Lease, (ii) the lessor’s interest in such Property is subject to a Mortgage and (iii) such Ground Lease is subordinate to such Mortgage, then the mortgagee shall have executed a customary non-disturbance agreement with respect to the rights of the Borrower or Subsidiary Grantor, as the case may be, under such Ground Lease.

“**Environmental Claims**” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

“**Environmental Insurance Policy**” means that certain insurance policy titled “Pollution Legal Liability Strict”, dated as of June 28, 2012 (which terminates on June 28, 2022, and issued by AIG Specialty Insurance Company in favor of the Company).

“**Environmental Laws**” means any Applicable Law relating to environmental protection or the manufacture, storage, remediation, transport, treatment, disposal or clean-up of Hazardous Materials including, without limitation, the following: Clean Air Act, 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; regulations of the Environmental Protection Agency, any applicable rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Materials, and any analogous or comparable state or local laws, regulations or ordinances that concern Hazardous Materials or protection of the environment.

“**Equity Interest**” means, with respect to any Person, any share of capital stock of (or other ownership or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership or profit interests in) such Person, whether or not certificated, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or non-voting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Event**” means, with respect to the ERISA Group, (a) any “reportable event” as defined in Section 4043 of ERISA with respect to a Plan; (b) the withdrawal of a member of the ERISA Group from a Plan subject to Section 4063 of ERISA during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by a member of the ERISA Group of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (d) the incurrence by any member of the ERISA Group of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC; (f) the failure by any member of the ERISA Group to make when due required contributions to a Multiemployer Plan or Plan unless such failure is cured within thirty (30) days or the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan or the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the receipt by any member of the ERISA Group of any notice or the receipt by any Multiemployer Plan from any member of the ERISA Group of any notice, concerning the imposition of Withdrawal Liability or a determination that a

Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Section 4245 of ERISA), in reorganization (within the meaning of Section 4241 of ERISA), or in “critical” status (within the meaning of Section 432 of the Internal Revenue Code or Section 305 of ERISA); (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any member of the ERISA Group or the imposition of any Lien in favor of the PBGC under Title IV of ERISA; or (j) a determination that a Plan is, or is reasonably expected to be, in “at risk” status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA).

“**ERISA Group**” means the Borrower, any Subsidiary and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any Subsidiary, are treated as a single employer under Section 414 of the Internal Revenue Code.

“**Erroneous Payment**” has the meaning assigned thereto in Section 11.11(a).

“**Erroneous Payment Deficiency Assignment**” has the meaning assigned thereto in Section 11.11(d).

“**Erroneous Payment Impacted Class**” has the meaning assigned thereto in Section 11.11(d).

“**Erroneous Payment Return Deficiency**” has the meaning assigned thereto in Section 11.11(d).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Eurodollar Reserve Percentage**” means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“**Event of Default**” has the meaning given that term in Section 11.1.

“**Excess Cash Flow**” means, with respect to any Excess Cash Flow Period, an amount, (not less than zero), equal to:

(a) ECF NOI minus

(b) the sum of:

(i) the Imputed Base Management Fee, plus any reimbursable ordinary course third-party costs of unaffiliated parties that are not otherwise included in the calculation of the ECF NOI or required to be included under GAAP, for such Excess Cash Flow Period; provided that no other fees, costs or payments under any Property Management Agreement shall be included in the calculation thereof, plus

(ii) the sum of (x) the Monthly Payment pursuant to Section 2.7 during such Excess Cash Flow Period and (y) any other payments of principal or interest made with respect to the Loans during such Excess Cash Flow Period (other than the Net Cash Proceeds received of any Casualty/Condemnation Event or from the sale, transfer or other disposition of a Collateral Property); plus

(iii) the aggregate amount of (x) Capital Expenditures during such Excess Cash Flow Period and (y) funds deposited into the Capex Reserve Account following such Excess Cash Flow Period pursuant to Section 8.13.

“**Excess Cash Flow Period**” means, for the ECF Calculation Date occurring upon (a) March 1, 2022, the Stub Excess Cash Flow Period, (b) March 1st in any fiscal year, the period commencing July 1st through and including December 31st in the immediately preceding fiscal year and (c) September 1st in any fiscal year, the period within such fiscal year commencing January 1st through and including June 30th.

“**Exchange Act**” has the meaning given that term in Section 11.1.(l)(i).

“**Excluded Swap Obligation**” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Loan Party for or the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Loan Party, including under any applicable provision of the Guaranty, REIT Bad-Act Guaranty or the Parent Guaranty). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or Lien is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to an Applicable Law in effect on the date on which (i) such Lender acquires such interest in the Loan (other than pursuant to an assignment request by the Borrower under Section 5.6) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.10, amounts with respect to such Taxes were payable either to such Lender’s assignor

immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.10(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“**Existing Borrower**” has the meaning set forth in the recitals hereto.

“**Existing Credit Agreement**” has the meaning set forth in the recitals hereto.

“**Existing Lenders**” has the meaning set forth in the recitals hereto.

“**Facility**” means the Term Loan Facility.

“**Facility Interest Expense**” means, only the actual interest accrued in such period and paid in cash in such period.

“**Fair Market Value**” means, with respect to any Property, the price as determined by Appraisal.

“**FASB ASC**” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“**FATCA**” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

“**FCA**” has the meaning assigned thereto in Section 1.3.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions selected by the Administrative Agent. If the Federal Funds Rate determined as provided above would be less than zero, the Federal Funds Rate shall be deemed to be zero for purposes of this Agreement.

“**Fee Letter**” means that certain fee letter dated as of [___], 2021, by and among the Borrower, the Administrative Agent and Wells Fargo Securities, LLC.

“**Fees**” means the fees and commissions provided for or referred to in Section 3.5 and any other fees payable by the Borrower hereunder, under any other Loan Document.

“**FIRREA**” means the Financial Institution Recovery, Reform and Enforcement Act of 1989.

“**Flood Laws**” has the meaning assigned to such term in Section 12.13.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“**First Extended Maturity Date**” means November 1, 2026.

“**First Semi-Annual Period**” means the period from January 1st through June 30th in any fiscal year.

“**Foreign Lender**” means (a) if the Borrower (or, if the Borrower is disregarded as an entity separate from its owner for U.S. federal tax purposes, its regarded owner for U.S. federal tax purposes) is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower (or, if the Borrower is disregarded as an entity separate from its owner for U.S. federal tax purposes, its regarded owner for U.S. federal tax purposes) is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower (or such regarded owner, as applicable) is resident for tax purposes.

“**Fund**” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

“**GAAP**” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (including Statement of Financial Accounting Standards No. 168, “The FASB Accounting Standards Codification”) or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination.

“**Governmental Approvals**” means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

“**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) over any of the parties to this Agreement, or any arbitrator with authority to bind a party at law.

“**Ground Lease**” means a ground lease containing the following terms and conditions: (a) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor; (b) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and agreement of such

lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; (c) reasonable transferability of the lessee's interest under such lease, including ability to sublease; and (d) such other rights customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease.

“Guaranteed Obligations” means the Obligations.

“Guarantors” means, individually and collectively, as the context shall require, the Parent and the Company (in each case, subject to the termination thereof in accordance with the terms of the Parent Guaranty and the REIT Bad-Act Guaranty, as applicable) and the Subsidiary Guarantors.

“Guaranty”, **“Guaranteed”** or **“Guarantee”** as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection in the ordinary course of business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect, contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of non-performance) of any part or all of such obligation whether by: (i) the purchase of securities or obligations, (ii) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of non-performance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, (iii) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (iv) repayment of amounts drawn down by beneficiaries of letters of credit, or (v) the supplying of funds to or investing in a Person on account of all or any part of such Person's obligation under a Guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. As the context requires, **“Guaranty”** shall also mean each guaranty executed and delivered pursuant to Section 6.1 or Section 8.14 and substantially in the form of Exhibit B.

“Hazardous Materials” means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic substances” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, “TCLP” toxicity, or “EP toxicity”; (b) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; (d) asbestos in any form; (e) toxic mold; and (f) electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

“IBA” has the meaning set forth in Section 1.3.

“Imputed Base Management Fee” means the imputed base management fees in a semi-annual amount of \$4,500,000.

“Imputed Base Management Fee-Additional Collateral Properties” means the allocated imputed base management fees for the Additional Collateral Properties in a semi-annual amount of \$4,500,000 based on the ratio of Additional Collateral Properties MCASH NOI to total MCASH NOI.

“Indebtedness” means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed or for the deferred purchase price of property or services (excluding trade debt incurred in the ordinary course of business); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit (but only to the extent of any outstanding balance), (ii) evidenced by bonds, debentures, notes or similar instruments (but only to the extent such debt is not otherwise included in Indebtedness), or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or for services rendered; (c) Capitalized Lease Obligations of such Person; (d) all reimbursement obligations (contingent or otherwise) of such Person under or in respect of any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off-Balance Sheet Obligations of such Person; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily Redeemable Stock issued by such Person or any other Person, valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) all obligations of such Person in respect of any purchase obligation, repurchase obligation, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement (excluding any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily Redeemable Stock)); (h) net obligations under any Derivatives Contract not entered into as a hedge against then existing Indebtedness (which shall be deemed to have an amount equal to the Derivatives Termination Value thereof at such time but in no event shall be less than zero); (i) all Indebtedness of other Persons which such Person has Guaranteed or is otherwise recourse to such Person (except for guaranties of customary exceptions for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar customary exceptions to non-recourse liability); and (j) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation. Indebtedness of any Person shall include Indebtedness of any other Person to the extent of such Person’s Ownership Share of such other Person (except if such Indebtedness, or portion thereof, is recourse to such Person, in which case the greater of such Person’s Ownership Share of such Indebtedness or the amount of the recourse portion of the Indebtedness shall be included as Indebtedness of such Person). All Loans shall constitute Indebtedness of the Borrower.

“Indemnifiable Amounts” has the meaning given that term in [Section 12.6](#).

“Indemnified Costs” has the meaning given that term in [Section 13.10\(a\)](#).

“Indemnified Party” has the meaning given that term in [Section 13.10\(a\)](#).

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Company, the Parent, Borrower or any other Loan Party under any Loan Document and (b) to the extent not otherwise described in the immediately preceding clause (a), Other Taxes.

“**Indemnity Proceeding**” has the meaning given that term in Section 13.10(a).

“**Index Debt**” means senior, unsecured, long-term indebtedness for borrowed money of the Company that is not guaranteed by any other person or subject to any other credit enhancement.

“**Information Materials**” has the meaning given that term in Section 9.6.

“**Initial Collateral Property**” has the meaning given that term in the definition of “Collateral Properties”.

“**Initial Maturity Date**” means November [1], 2025.

“**Intellectual Property**” has the meaning given that term in Section 7.1(s).

“**Interest Coverage Ratio**” means, as of any date of determination, the ratio of (a) MCASH NOI for the last day of the most recently completed fiscal quarter for which financial statements are required to be delivered pursuant to Section 9.1 or Section 9.2, as applicable, to (b) the Facility Interest Expense for such period, determined on a trailing four (4) fiscal quarter basis.

“**Interest Period**” means with respect to each LIBOR Loan, each period commencing on the date such LIBOR Loan is made, or in the case of the Continuation of a LIBOR Loan the last day of the preceding Interest Period for such Loan, and ending on the numerically corresponding day in the first calendar month thereafter, as the Borrower may select in a Notice of Continuation or Notice of Conversion, as the case may be, except that each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month. Notwithstanding the foregoing: (i) if any Interest Period would otherwise end after the applicable Maturity Date, such Interest Period shall end on such Maturity Date; and (ii) each Interest Period that would otherwise end on a day which is not a Business Day shall end on the immediately following Business Day (or, if such immediately following Business Day falls in the next calendar month, on the immediately preceding Business Day).

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

“**Investment**” means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person. Any commitment to make an Investment in any other Person, as well as any option of

another Person to require an Investment in such Person, shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in a Loan Document, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment. It is understood and agreed that the term “Investment” shall exclude the licensing, sublicensing, leases, subleases or contribution of intellectual property pursuant to joint marketing or similar arrangements (a) related to and benefiting the Collateral Properties, (b) which are with unaffiliated third-parties and (c) entered into in the ordinary course of business and consistent with past practice.

“**Lender**” means each financial institution from time to time party hereto as a “Lender”, together with its respective successors and permitted assigns. With respect to matters requiring the consent or approval of all Lenders at any given time, all then existing Defaulting Lenders and Non-Debt Fund Affiliates will be disregarded and excluded, and, for voting purposes only, “all Lenders” shall be deemed to mean “all Lenders other than Defaulting Lenders and Non-Debt Fund Affiliates”.

“**Lender Parties**” means, collectively, the Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 12.5, any other holder from time to time of any of any Obligations and, in each case, their respective successors and permitted assigns.

“**Lending Office**” means, for each Lender, the office of such Lender specified in such Lender’s Administrative Questionnaire or in the applicable Assignment and Assumption, or such other office of such Lender as such Lender may notify the Administrative Agent in writing from time to time.

“**LIBOR**” means, subject to the implementation of a Benchmark Replacement in accordance with Section 5.2(b), with respect to any LIBOR Loan for any Interest Period, the rate of interest obtained by dividing (i) the rate of interest per annum determined on the basis of the rate as published by the ICE Benchmark Administration Limited, a United Kingdom company (or a comparable or successor quoting service approved by the Administrative Agent) for deposits in Dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period by (ii) a percentage equal to 1 minus the Eurodollar Reserve Percentage. If, for any reason, the rate referred to in the preceding clause (i) is not so published, then “LIBOR” (i) shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period. Any change in the Eurodollar Reserve Percentage shall result in a change in LIBOR on the date on which such change in such Eurodollar Reserve Percentage becomes effective. If LIBOR determined as provided above (including, without limitation, any Benchmark Replacement with respect thereto) would be less than 1.00%, LIBOR shall be deemed to be 1.00% for purposes of this Agreement. Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, unless otherwise specified in any

amendment to this Agreement entered into in accordance with Section 5.2(b), in the event that a Benchmark Replacement with respect to LIBOR is implemented, then all references herein and in any other Loan Document to LIBOR shall be deemed references to such Benchmark Replacement.

“**LIBOR Loan**” means a Term Loan (or any portion thereof) (other than a Base Rate Loan) bearing interest at a rate based on LIBOR.

“**LIBOR Market Index Rate**” means, for any day, LIBOR as of that day that would be applicable for a LIBOR Loan having a one-month Interest Period determined at approximately 10:00 a.m. Central time for such day (rather than 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period as otherwise provided in the definition of “LIBOR”), or if such day is not a Business Day, the immediately preceding Business Day. The LIBOR Market Index Rate shall be determined on a daily basis.

“**Lien**” as applied to the property of any Person means: (a) any security interest, encumbrance, mortgage, deed to secure debt, deed of trust, assignment of leases or rents, pledge, lien, hypothecation, assignment, charge or lease constituting a Capitalized Lease Obligation, conditional sale or other title retention agreement, or other security title or encumbrance of any kind in respect of any property of such Person, or upon the income, rents or profits therefrom; (b) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person; (c) the filing of any financing statement under the UCC or its equivalent in any jurisdiction, other than any precautionary filing not otherwise constituting or giving rise to a Lien, including a financing statement filed (i) in respect of a lease not constituting a Capitalized Lease Obligation pursuant to Section 9-505 (or a successor provision) of the UCC or its equivalent as in effect in an applicable jurisdiction or (ii) in connection with a sale or other disposition of accounts or other assets not prohibited by this Agreement in a transaction not otherwise constituting or giving rise to a Lien; and (d) any agreement by such Person to grant, give or otherwise convey any of the foregoing.

“**Loan**” means a Term Loan.

“**Loan Document**” means this Agreement, each Note, the Parent Guaranty, each Guaranty, the REIT Bad-Act Guaranty, the Collateral Agreement, each other Security Document, the Fee Letters and each other document or instrument now or hereafter executed and delivered by a Loan Party in connection with, pursuant to or relating to this Agreement.

“**Loan Party**” means each of the Borrower and each Subsidiary Guarantor. Part I of Schedule 7.1.(b) sets forth the Loan Parties in addition to the Borrower as of the Agreement Date. For purposes of clarity, (x) any Person which is a Loan Party solely by virtue of having Guaranteed all or a portion of the Obligations shall cease to be a Loan Party upon the release of such Person from all of its obligations under such Guaranty and (y) any Person which is a Loan Party solely by virtue of having Guaranteed all or a portion of the Obligations and having pledged any Collateral to secure all or a portion of the Obligations shall cease to be a Loan Party upon the release of such Person from all of its obligations under such Guaranty and under the Security Documents.

“**Management Company**” means CBL & Associates Management, Inc., a Delaware corporation, a Wholly Owned Subsidiary of the Parent, or any other Wholly Owned Subsidiary of the Parent or the Borrower that succeeds to the obligations of CBL & Associates Management, Inc. to manage the Collateral Properties, together with its successors and permitted assigns.

“**Mandatorily Redeemable Stock**” means, with respect to any Person, any Equity Interest of such Person which by the terms of such Equity Interest (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than an Equity Interest to the extent redeemable in exchange for common stock or other equivalent common Equity Interests at the option of the issuer of such Equity Interest), (b) is convertible into or exchangeable or exercisable for Indebtedness or Mandatorily Redeemable Stock, or (c) is redeemable at the option of the holder thereof, in whole or in part (other than an Equity Interest which is redeemable solely in exchange for common stock or other equivalent common Equity Interests, or, at the election of the Borrower, in exchange for cash); in each case, on or prior to the latest Maturity Date.

“**Material Adverse Effect**” means a materially adverse effect on (a) the business, assets, liabilities, condition (financial or otherwise), results of operations of the Borrower and its Subsidiaries, in either case taken as a whole, (b) the ability of the Borrower or any other Loan Party to perform its obligations under any Loan Document to which it is a party, (c) the validity or enforceability of any of the Loan Documents, (d) the rights and remedies of the Lenders and the Administrative Agent under any of the Loan Documents, (e) the timely payment of the principal of or interest on the Loans or other amounts payable in connection therewith or (f) the Collateral taken as a whole, the Liens securing the Guaranteed Obligations or the priority of any such Lien; provided, that no effect on the business, assets, liabilities, condition (financial or otherwise), results of operations of the Borrower and its Subsidiaries or the ability of the Borrower or any other Loan Party to perform its obligations under any Loan Document resulting from the impact of the Chapter 11 Cases prior to the date hereof or any event, circumstance or condition related to or resulting from the Chapter 11 Cases shall constitute a Material Adverse Effect under clause (a) and (b) above.

“**Material Contract**” means (a) each Property Management Agreement, if any, with respect to a Collateral Property and (b) any contract or other arrangement relating to a Collateral Property (other than Loan Documents), whether written or oral, to which the Borrower or any other Loan Party is a party as to which the breach, non-performance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

“**Maturity Date**” means the Initial Maturity Date or, to the extent such date is extended pursuant to Section 2.13, the First Extended Maturity Date or the Second Extended Maturity Date, as applicable.

“**Minimum Capital Expenditure Amount**” means \$15,000,000.

“**Minimum Release Price**” means, with respect to any Collateral Property, an amount in cash equal to the greatest of:

- (a) The Allocated Loan Amount multiplied by the percentage set forth in Schedule 1.1(d) with respect to such Property;
- (b) 100% of the Net Cash Proceeds received by the Borrower, any Guarantor or any other Subsidiary of the Borrower from the sale, transfer or other disposition of such Property; and
- (c) An amount such that the pro forma Debt Yield Ratio, with respect to the Property remaining after such Property Release, shall be greater than or equal to the greater of (a) the Debt Yield Ratio as of the end of the fiscal quarter ending immediately prior to such Property Release and (b) 12.00%.

“**MIRE Event**” means, any increase, extension or renewal of any of the Loans (excluding (i) any continuation or conversion of Loans or (ii) the making of any Loan).

“**Modified Cash Basis Net Operating Income**” or “**MCASH NOI**” means, for any Collateral Property and for a given period, the sum of the following (without duplication and determined on a consistent basis with prior periods and in accordance with GAAP):

(a) rents and other revenues recognized in the ordinary course from such Property (including proceeds of rent loss or business interruption insurance, but excluding (i) pre-paid rents and revenues and security deposits except to the extent applied in satisfaction of tenants’ obligations for rent including write-off of debt and (ii) any amounts related to the amortization of above and below market rents, straight line rents and write-off of landlord inducements, minus

(b) all operating expenses (excluding interest and depreciation expense) related to the ownership, operation or maintenance of such Property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such Property, but specifically excluding general overhead expenses of the Parent and its Subsidiaries and any actual or imputed property management fees, including, without limitation, the Imputed Base Management Fee).

“**Mortgage**” means a mortgage, deed of trust, deed to secure debt or similar security instrument made or to be made by a Person owning an interest in real estate granting a Lien on such interest in real estate as security for the payment of Indebtedness.

“**Multiemployer Plan**” means at any time a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding five (5) plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such five (5) year period.

“**Negative Pledge**” means, with respect to a given asset, any provision of a document, instrument or agreement (other than any Loan Document) which prohibits or purports to prohibit the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that an agreement that conditions a Person’s ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person’s ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, shall not constitute a Negative Pledge.

“**Net Cash Proceeds**” means, with respect to any sale, transfer or other disposition of a Property, the gross proceeds received by any Loan Party or any of its Subsidiaries therefrom (including any cash, Cash Equivalents, deferred payment pursuant to, or by monetization of, a note receivable or otherwise, as and when received) less the sum of (i) all income taxes and other taxes assessed by, or reasonably estimated to be payable by the Borrower or the applicable Loan Party, to a Governmental Authority as a result of such transaction (provided that if such estimated taxes exceed the amount of actual taxes required to be paid in cash in respect of such sale, transfer or other disposition, the amount of such excess shall constitute Net Cash Proceeds), (ii) all reasonable and customary out-of-pocket fees and expenses incurred in connection with such sale, transfer or other disposition to the extent paid to unaffiliated third parties and (iii) the principal amount of, premium, if any, and interest on any Indebtedness secured by a Lien on the property (or a portion thereof) disposed of that is pari passu to or senior in ranking to the Liens on such asset created by the Loan Documents, which Indebtedness is required to be repaid in connection with such transaction or event.

“**New Notes Issuer**” means CBL & Associates Holdco II, LLC.

“**Non-Consenting Lender**” means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 13.7 and (b) has been approved by the Requisite Lenders.

“**Non-Debt Fund Affiliate**” means an Affiliated Lender that is not a Debt Fund Affiliate.

“**Non-Recourse Indebtedness**” means, with respect to a Person, Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar customary exceptions to non-recourse liability, in the case of any Person that is the Borrower or any of its Subsidiaries, in a form reasonably acceptable to the Administrative Agent) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness.

“**Note**” means a Term Note.

“**Notice of Continuation**” means a notice substantially in the form of Exhibit D (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.10 evidencing the Borrower’s request for the Continuation of a LIBOR Loan.

“**Notice of Conversion**” means a notice substantially in the form of Exhibit E (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.11, evidencing the Borrower’s request for the Conversion of a Loan from one Type to another Type.

“**Obligations**” means, individually and collectively, without duplication: (a) the aggregate principal balance of, and all accrued and unpaid interest on, all Loans; and (b) all other indebtedness, liabilities, obligations, covenants and duties of the Borrower or any of the other Loan Parties owing to the Administrative Agent, or any Lender of every kind, nature and description, under or in respect of this Agreement or any of the other Loan Documents, including, without limitation, the Fees and indemnification obligations, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any promissory note, and including any interest and fees that accrue following the commencement of a proceeding by or against any Loan Party under a Debtor Relief Law.

“**Occupancy Rate**” means the ratio, expressed as a percentage, of (a) the net rentable owned square footage of such Property by tenants that are not affiliated with the Borrower and paying rent, to (b) the aggregate owned net rentable square footage of such Property. For the purposes of the definition of “Occupancy Rate”, a tenant shall be deemed to occupy a Property if (i) the failure to actually occupy such Property is as a result of a temporary cessation of operations for renovation, repairs or other temporary reason, (ii) such tenant is completing a tenant build out, or is otherwise scheduled to be open for business, within ninety (90) days of such date, or (iii) such tenant is not actually occupying such Property but is paying rent. For a Property that is a mall, the calculation of the ratio shall include only those spaces that are less than 20,000 square feet and located within the ring road of such mall. For all Properties, units that are occupied by a license/branding tenant with a total term (including renewals and relocations) of less than 90 days are treated as vacant for purposes of calculating the ratio.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Off-Balance Sheet Obligations**” means liabilities and obligations of the Borrower, any Subsidiary in respect of “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Parent would be required to disclose in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the Parent’s report on Form 10-Q or Form 10-K (or their equivalents) which the Parent is required to file with the SEC.

“**Other Benchmark Rate Election**” means, with respect to a Benchmark with respect to any Obligations, interest, fees, commissions or other amounts denominated in Dollars or calculated with respect thereto, if such Benchmark is USD LIBOR, the occurrence of:

(a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a USD LIBOR-based rate, a term benchmark rate that is not a SOFR-based rate as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.6).

“**Overnight Rate**” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

“**Ownership Share**” means, with respect to any Subsidiary of a Person (other than a Wholly Owned Subsidiary), the greater of (a) such Person’s relative nominal direct and indirect ownership interest (expressed as a percentage) in such Subsidiary or (b) such Person’s relative direct and indirect economic interest (calculated as a percentage) in such Subsidiary determined in accordance with the applicable provisions of the declaration of trust, articles or certificate of incorporation or formation, articles of organization, partnership agreement, joint venture agreement or other applicable organizational document of such Subsidiary.

“**Parent**” means CBL & Associates Limited Partnership, a limited partnership organized under the laws of the State of Delaware.

“**Parent Guaranty**” means the Parent Guaranty executed and delivered by the Parent in favor of the Administrative Agent and the other Lender Parties and substantially in the form of Exhibit G.

“**Parent Guaranty Termination Date**” means the first date upon which the Parent Guaranty is terminated in accordance with Section [_] thereof.

“**Participant**” has the meaning given that term in Section 13.6(d).

“**Participant Register**” has the meaning given that term in Section 13.6(d).

“**Patriot Act**” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“**PBGC**” means the Pension Benefit Guaranty Corporation and any successor agency.

“**Permitted Liens**” means, with respect to any asset or property of a Person, (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any Environmental Laws), which, in each case, are not at the time required to be paid or discharged under Section 8.6, (b) the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which, in each case, are not at the time required to be paid or discharged under Section 8.6; (c) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers’ compensation, unemployment insurance or similar Applicable Laws; (d) Liens consisting of encumbrances in the nature of zoning restrictions, easements, and rights or restrictions of record on the use of real property, which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person; (e) the rights of tenants under leases or subleases not interfering with the ordinary conduct of business of such Person; (f) Liens in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties; (g) Liens in existence on the Effective Date and set forth in Schedule 1.1(b) hereto, which shall be reasonably acceptable to the Administrative Agent; (h) licenses of Intellectual Property granted in the ordinary course of business which do not materially detract from the value of such Intellectual Property or impair the intended use thereof in the business of such Person; and (i) Liens set forth in the Title Policies obtained by the Administrative Agent (to the extent subject to acceptable insurance coverage thereunder).

“**Permitted Unimproved Land Contribution**” means the contribution of the Borrower or any Subsidiary Grantor of a portion of any Property constituting Unimproved Land to a joint venture in which the Borrower or any Affiliate thereof is a partner.

“**Person**” means any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any other non-governmental entity, or any Governmental Authority.

“**Plan**” means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (i) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (ii) has at any time within the preceding five (5) years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

“**Post-Default Rate**” means, (a) in respect of any principal of any Loan, the rate otherwise applicable plus an additional two percent (2%) per annum and (b) with respect to any other Obligation, a rate per annum equal to the Base Rate as in effect from time to time plus the Applicable Margin for Base Rate Loans plus two percent (2%) per annum.

“**Post-Foreclosure Plan**” has the meaning given that term in Section 12.12.

“**Prime Rate**” means, at any time, the rate of interest per annum publicly announced from time to time by the Lender then acting as the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Lender acting as the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“**Principal Office**” means the office of the Administrative Agent located at 401 South Tryon St., 4th Floor, MAC D1050-040, Charlotte, NC 28202-1911, or any other subsequent office that the Administrative Agent shall have specified as the Principal Office by written notice to the Borrower and the Lenders.

“**Pro Rata Share**” means, as to each Lender, the ratio, expressed as a percentage of (a) the amount of such Lender’s outstanding Term Loans to (b) the aggregate amount of all outstanding Term Loans. For purposes of Section 3.9(b) when a Defaulting Lender shall exist, any such Defaulting Lender’s Loans shall be disregarded in the calculation of Pro Rata Share.

“**Property**” means a parcel (or group of related parcels) of real property developed (or to be developed) by the Borrower or any Subsidiary.

“**Property Management Agreements**” means, collectively, all agreements entered into by the Borrower or any other Loan Party pursuant to which the Borrower or such other Loan Party engages a Person to advise it with respect to the management of a given Collateral Property and/or to manage a given Collateral Property.

“**Property Management Contract Assignment**” means an Assignment and Subordination of Management Agreement executed by the Borrower or any other Loan Party in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties, substantially in the form of Exhibit N or otherwise in form and substance reasonably satisfactory to the Administrative Agent. Such document may, at the Administrative Agent’s election, constitute a subordination of a Property Management Agreement, rather than an assignment thereof.

“**Property Owner**” has the meaning given that term in Section 4.2(a).

“**Property Release**” has the meaning given that term in Section 4.2(a).

“**Protective Advance**” means all sums expended as determined by the Administrative Agent to be necessary or appropriate after the Borrower or any other Loan Party fails to do so when required: (a) to protect the validity, enforceability, perfection or priority of the Liens in any of the Collateral and the instruments evidencing the Obligations; (b) to prevent the value of any Collateral from being materially diminished (assuming the lack of such a payment within the necessary time frame could potentially cause such Collateral to lose value); or (c) to protect any of the Collateral from being materially damaged, impaired, mismanaged or taken, including, without limitation, any amounts expended in connection therewith in accordance with Section 13.2.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Recipient**” means (a) the Administrative Agent, and (b) any Lender, as applicable.

“**Recourse Indebtedness**” means any Indebtedness of a Person that is not Non-Recourse Indebtedness.

“**Reference Time**” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two (2) London Banking Days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“**Register**” has the meaning given that term in Section 13.6(c).

“**Regulatory Change**” means, with respect to any Lender, any change effective after the Effective Date in Applicable Law (including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks, including such Lender, of or under any Applicable Law (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any Governmental Authority or monetary authority charged with the interpretation or administration thereof or compliance by any Lender with any request or directive regarding capital adequacy or liquidity ratios or requirements. Notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Regulatory Change,” regardless of the date enacted, adopted, issued or implemented.

“**REIT**” means a Person qualifying for treatment as a “real estate investment trust” under the Internal Revenue Code.

“**REIT Bad-Act Guaranty**” means the REIT Bad-Act Guaranty executed and delivered by the Company in favor of the Administrative Agent and the other Lender Parties and substantially in the form of Exhibit H.

“**REIT Guaranty Termination Date**” means the first date upon which the REIT Bad-Act Guaranty is terminated in accordance with Section [_] thereof.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, shareholders, directors, trustees, officers, employees, agents, counsel, other advisors and representatives of such Person and of such Person’s Affiliates.

“**Relevant Governmental Body**” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“**Rent Roll**” has the meaning given that term in Section 7.1(cc)(ix).

“**Required Collateral Properties**” means each Collateral Property set forth on Schedule 1.1(c).

“**Requisite Lenders**” means, as of any date, Lenders holding greater than fifty percent (50%) of the principal amount of the aggregate outstanding Loans; provided that (i) in determining such percentage at any given time, all then existing Defaulting Lenders and Non-Debt Fund Affiliates will be disregarded and excluded and (ii) at all times when two (2) or more Lenders (excluding Defaulting Lenders and Non-Debt Fund Affiliates) are party to this Agreement, the term “Requisite Lenders” shall in no event mean less than two (2) Lenders.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Restricted Payment**” means: (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of the Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of Equity Interest to the holders of that class; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of the Borrower or any of its Subsidiaries now or hereafter outstanding; (c) any payment or prepayment of principal of, premium, if any, or interest on, redemption, conversion, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Subordinated Debt; (d) any Investment; and (e) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding.

“**Restructuring Support Agreement**” means that certain Notice of Filing of Amended Restructuring Support Agreement Among the Debtors, the Consenting Bank Lenders and Consenting Lenders filed by the Debtors on March 22, 2021.

“**Sanctioned Country**” means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Effective Date, Cuba, Iran, North Korea, Syria and Crimea).

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

“**Sanctions**” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction in which (a) the Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Loans will be used, or (c) from which repayment of the Loans will be derived.

“**SEC**” means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Second Extended Maturity Date**” means November 1, 2027.

“**Second Semi-Annual Period**” means the period from July 1st through December 31st in any fiscal year.

“**Secured Indebtedness**” means, with respect to a Person as of a given date, the aggregate principal amount of all Indebtedness of such Person outstanding on such date that is secured in any manner by any Lien on any property.

“**Securities Act**” means the Securities Act of 1933, together with all rules and regulations issued thereunder.

“**Security Deed**” means a Mortgage executed by the Borrower or a Subsidiary of the Borrower in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties, in form and substance satisfactory to the Administrative Agent.

“**Security Document**” means the Collateral Agreement, any Security Deed, any Property Management Contract Assignment, and any security agreement, pledge agreement, financing statement, or other document, instrument or agreement creating, evidencing or perfecting the Administrative Agent’s Liens in any of the Collateral.

“**Senior Officer**” means the CEO, President, an Executive Vice President, Senior Vice President - Accounting, Vice President - Accounting, the Chief Legal Officer or the Chief Financial Officer of the general partner of the Parent.

“**SOFR**” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Solvent**” means, when used with respect to any Person, that (a) the fair value and the fair salable value of its assets (excluding any Indebtedness due from any Affiliate of such Person) are each in excess of the fair valuation of its total liabilities (including all contingent liabilities computed at the amount which, in light of all facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and matured liability); (b) such Person is able to pay its debts or other obligations in the ordinary course as they mature; and (c) such Person has capital not unreasonably small to carry on its business and all business in which it proposes to be engaged.

“**Specified Equity Interests**” has the meaning given that term in **Section 10.2**.

“**Stub Excess Cash Flow Period**” means the period commencing upon November 1, 2021 through and including December 31, 2021.

“**Stub Period Excess Cash Flow**” means an amount (not less than zero) equal to:

- (a) ECF NOI for the Stub Excess Cash Flow Period minus
- (b) the sum of:
 - (i) an imputed base management fee of \$1,500,000, plus any reimbursable ordinary course third-party costs of unaffiliated parties for the Stub Excess Cash Flow Period that are not otherwise included in the calculation of the MCASH NOI or required to be included under GAAP; plus
 - (ii) the sum of (x) the Monthly Payment pursuant to Section 2.7, and (y) any other payments of principal or interest made with respect to the Loans, in each case, during the Stub Excess Cash Flow Period; plus
 - (iii) Capital Expenditures in an aggregate amount equal to the greater of (x) the actual amount thereof expensed during the Stub Excess Cash Flow Period and (y) the lesser of (1) \$2,500,000 and (2) \$15,000,000 minus the actual amount of Capital Expenditures expensed during the period of January 1, 2021 through and including October 31, 2021, which in no case shall be less than zero; plus
 - (iv) the aggregate amount of funds deposited into the Capex Reserve Account during such Stub Excess Cash Flow Period.

“**Subsidiary**” means, for any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, trustees or other individuals performing similar functions of such corporation, partnership, limited liability company, trust or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP, and unless a provision of this Agreement expressly states otherwise, the term shall mean a direct or indirect Subsidiary of the Borrower.

“**Subsidiary Grantors**” means, collectively, (i) each direct owner of any Collateral Property, (ii) any Subsidiary of the Borrower that directly or indirectly owns the Equity Interests of any direct owner of any Collateral Property, (iii) any Subsidiary that becomes a Subsidiary Grantor pursuant to the terms of Section 8.14 and (iv) any Subsidiary that elects to become a Subsidiary Grantor.

“**Subsidiary Guarantors**” means, collectively, (i) each Subsidiary Grantor, (ii) any Subsidiary of the Borrower that directly or indirectly owns the Equity Interests of any owner of any Collateral Property and does not otherwise directly own the Equity Interests of any Subsidiary Grantor, (iii) any Subsidiary that becomes a Subsidiary Guarantor pursuant to the terms of Section 8.14 and (iv) any Subsidiary that elects to become a Subsidiary Guarantor.

“**Substantial Amount**” means, at the time of determination thereof, an amount in excess of twenty-five percent (25%) of Total Asset Value for the quarter most recently ended as reported on the Compliance Certificate for such fiscal quarter.

“**Super-Majority Lenders**” means, as of any date, Lenders having more than sixty-six and two thirds percent (66-2/3%) of the principal amount of the aggregate outstanding Loans; provided that (i) in determining such percentage at any given time, all then existing Defaulting Lenders and Non-Debt Fund Affiliates will be disregarded and excluded and (ii) at all times when two (2) or more Lenders (excluding Defaulting Lenders and Non-Debt Fund Affiliates) are party to this Agreement, the term “Super-Majority Lenders” shall in no event mean less than two (2) Lenders.

“**Swap Obligation**” means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Tenant Lease**” means any lease entered into by the Borrower, any Loan Party or any Subsidiary with respect to any portion of a Property.

“**Term Loan**” means a loan made by a Term Loan Lender to the Borrower pursuant to Section 2.2.

“**Term Loan Facility**” means, at any time, the aggregate outstanding principal amount of the Term Loans of all Term Loan Lenders.

“**Term Loan Lender**” means a Lender holding a Term Loan.

“**Term Note**” means a promissory note of the Borrower substantially in the form of Exhibit J, payable to a Term Loan Lender and its registered assigns in a principal amount equal to the amount of such Term Loan Lender’s Term Loan.

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Term SOFR Notice**” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“**Term SOFR Transition Event**” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.2(b) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.

“**Third Party Affiliate**” means any Person which owns any interest in the Parent, the Borrower or any Subsidiary of the Borrower, but which Person is neither a Senior Officer nor a Subsidiary of the Borrower.

“**Tie-In Jurisdiction**” means a jurisdiction in which a “tie-in” endorsement may be obtained for a Title Policy covering property located in such jurisdiction which endorsement effectively ties coverage to other Title Policies covering properties located in other jurisdictions.

“**Title Insurance Company**” means (i) Fidelity National Title Insurance Company, (ii) Chicago Title Insurance Company, (iii) First American Title Insurance Company, (iv) Commonwealth Land Title Insurance Company, or (v) any other title company selected by the Borrower and reasonably acceptable to the Administrative Agent.

“**Title Policy**” means, with respect to each **Collateral Property**, an ALTA standard form title insurance policy (or, if such form is not available, an equivalent, legally promulgated form of mortgagee title insurance policy reasonably acceptable to the Administrative Agent) issued by a Title Insurance Company (with such co-insurance or reinsurance as the Administrative Agent may reasonably require, any such co-insurance or reinsurance to be with direct access endorsements to the extent available under Applicable Law) in an amount as the Administrative Agent may reasonably require based upon the Fair Market Value of the applicable **Collateral Property** insuring the priority of the Security Deed thereon and that the Borrower or a Loan Party, as applicable, holds marketable or indefeasible (with respect to Texas) fee simple title to such parcel, subject only to the encumbrances acceptable to the Administrative Agent in its reasonable discretion and which shall not contain standard exceptions for mechanics liens, persons in occupancy (other than tenants as tenants only under Tenant Leases) or matters which would be shown by a survey, shall not insure over any matter except to the extent that any such affirmative insurance is acceptable to the Administrative Agent in its reasonable discretion, and shall contain (a) a revolving credit endorsement and (b) such other endorsements and affirmative insurance as the Administrative Agent may reasonably require and is available in the state in which the **Collateral Property** is located, including, without limitation, (i) a comprehensive endorsement, (ii) a variable rate of interest endorsement, (iii) a usury endorsement, (iv) a doing business

endorsement, (v) an ALTA form 3.1 zoning endorsement, (vi) a “tie-in” endorsement relating to all Title Policies issued by such Title Insurance Company in respect of other **Collateral Property** in any Tie-In Jurisdiction, (vii) “first loss” and “last dollar” endorsements, and (viii) a utility location endorsement.

“**Total Asset Value**” shall have the meaning set forth in Parent’s balance sheet as provided in the most recent quarterly SEC filing.

“**UCC**” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**Unimproved Land**” means land on which no development (other than improvements that are not material and are temporary in nature) has occurred and for which no development is scheduled in the following twelve (12) months or which is occupied by a vacant building from which no income was underwritten by the Lenders; provided, however, that other than for purposes of a Permitted Unimproved Land Contribution, the term Unimproved Land shall not include (a) raw land subject to a Ground Lease under which the Borrower or a Subsidiary is the lessor and a Person not an Affiliate is the lessee, (b) land subject to a binding contract of sale under which the Borrower or one of its Subsidiaries is the seller and the buyer is not an Affiliate of the Borrower or (c) out-parcels held for lease at Properties which are either completed or where development has commenced.

“**Unsecured Indebtedness**” means, with respect to a Person, Indebtedness of such Person that is not Secured Indebtedness.

“**USD LIBOR**” means the London interbank offered rate for Dollars.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“**U.S. Tax Compliance Certificate**” has the meaning assigned to such term in Section 3.10(g)(ii)(B)(III).

“**Wells Fargo**” means Wells Fargo Bank, National Association, and its successors and permitted assigns.

“**Wholly Owned Subsidiary**” means any Subsidiary of a Person in respect of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares) are at the time directly or indirectly owned or controlled by such Person or one or more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries of such Person, and unless the context shall dictate otherwise, the term shall mean a Wholly Owned Subsidiary of the Borrower.

“**Withdrawal Liability**” means any liability as a result of a complete or partial withdrawal from a Multiemployer Plan as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Withholding Agent**” means (a) the Borrower, (b) any other Loan Party and (c) the Administrative Agent, as applicable.

“**Write-Down and Conversion Powers**” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2. **General; References to Central Time.**

Unless otherwise indicated, all accounting terms, ratios and measurements shall be interpreted or determined in accordance with GAAP as in effect on the Agreement Date; provided that, if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, the Borrower shall give the Administrative Agent written notice thereof promptly after the Borrower has knowledge thereof, and if either the Borrower or the Requisite Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Requisite Lenders); provided, further that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Upon the Company’s emergence from the Chapter 11 Plan, the calculation of liabilities shall be in accordance with the rules for “fresh start accounting” as set forth under FASB ASC 852 Reorganization. References in this Agreement to “Sections”, “Articles”, “Exhibits” and “Schedules” are to sections, articles, exhibits and schedules herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) except as expressly provided otherwise in any Loan Document, shall include all documents, instruments or agreements issued

or executed in replacement thereof, to the extent permitted hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Unless explicitly set forth to the contrary, a reference to “Subsidiary” means a Subsidiary of the Borrower (or a Subsidiary of such Subsidiary) and a reference to an “Affiliate” means a reference to an Affiliate of the Borrower. Except as expressly provided otherwise in any Loan Document, (i) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time and (ii) any reference to any Person shall be construed to include such Person’s permitted successors and permitted assigns. Titles and captions of Articles, Sections, subsections and clauses in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement. Unless otherwise indicated, all references to time are references to Central time, daylight or standard, as applicable.

Section 1.3. Rates.

The interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) may be determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, ICE Benchmark Administration (“IBA”), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the “FCA”), the regulatory supervisor of IBA, announced in public statements (the “Announcements”) that the final publication or representativeness date for the London interbank offered rate for Dollars for: (a) 1-week and 2-month tenor settings will be December 31, 2021 and (b) overnight, 1-month, 3-month, 6-month and 12-month tenor settings will be June 30, 2023. No successor administrator for IBA was identified in such Announcements. As a result, it is possible that commencing immediately after such dates, the London interbank offered rate for such tenors may no longer be available or may no longer be deemed a representative reference rate upon which to determine the interest rate on LIBOR Rate Loans or Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate). There is no assurance that the dates set forth in the Announcements will not change or that IBA or the FCA will not take further action that could impact the availability, composition or characteristics of any London interbank offered rate. Public and private sector industry initiatives have been and continue, as of the date hereof, to be underway to implement new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate or any other then-current Benchmark is no longer available or in certain other circumstances set forth in Section 5.2(b), such Section 5.2(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 5.2(b), of any change to the reference rate upon which the interest rate on LIBOR Rate Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any

liability with respect to, (i) the continuation of, administration of, submission of, calculation of or any other matter related to the London interbank offered rate or other rates in the definition of “LIBOR” or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 5.2(b), will be similar to, or produce the same value or economic equivalence of, LIBOR or any other Benchmark, or have the same volume or liquidity as did the London interbank offered rate or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of a Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any Benchmark, any component definition thereof or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Article II. Credit Facilities

Section 2.1. **[Reserved]**.

Section 2.2. **Making of Term Loans.**

Subject to the terms and conditions hereof, as of the Effective Date, each Term Loan Lender severally and not jointly agrees that the pre-petition Term Loans made by such Term Loan Lender outstanding on the Effective Date immediately prior to giving effect to this Agreement shall be converted into Term Loans in a principal amount equal to such Lender’s Term Loan commitment as set forth on Schedule I and shall be deemed funded on the Effective Date of the Chapter 11 Plan pursuant to this Agreement. The Term Loans shall amortize as set forth in Section 2.7(b).

Section 2.3. **[Reserved]**.

Section 2.4. **[Reserved]**.

Section 2.5. **Rates and Payment of Interest on Loans.**

(a) Rates. The Borrower promises to pay to the Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of the making of such Loan to but excluding the date such Loan shall be paid in full, at the following per annum rates:

(i) during such periods as such Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Base Rate Loans; and

(ii) during such periods as such Loan is a LIBOR Loan, at LIBOR for such Loan for the Interest Period therefor, plus the Applicable Margin for LIBOR Loans.

Notwithstanding the foregoing, (a) automatically upon any Event of Default under Section 11.1(a), Section 11.1(e) or Section 11.1(f), or (b) at the option of the Requisite Lenders (upon notice to the Borrower) while any other Event of Default exists, the Borrower shall pay to the Administrative Agent for the account of each Lender, interest at the Post-Default Rate on the outstanding principal amount of any Loan made by such Lender on any amount payable by the Borrower hereunder or under the Notes held by such Lender to or for the account of such Lender (including, without limitation, accrued but unpaid interest to the extent permitted under Applicable Law).

(b) Payment of Interest. All accrued and unpaid interest on the outstanding principal amount of each Loan shall be payable (i) monthly in arrears on the first day of each month, commencing with the first full calendar month occurring after the Effective Date, as a component of the Monthly Payment referred to in Section 2.7 below, and (ii) on any date on which the principal balance of such Loan is due and payable in full (whether at maturity, due to acceleration or otherwise). Interest payable at the Post-Default Rate shall be payable from time to time on demand. All determinations by the Administrative Agent of an interest rate hereunder shall be conclusive and binding on the Lenders and the Borrower for all purposes, absent manifest error.

Section 2.6. **Number of Interest Periods.**

Notwithstanding anything to the contrary contained in this Agreement, there may be no more than eight (8) different Interest Periods for all Loans outstanding at the same time.

Section 2.7. **Repayment of Loans; Amortization of Term Loans.**

(a) [Reserved].

(b) Term Loans. The Borrower promises to repay the Term Loans on the first Business Day of each month following the Effective Date, commencing on the first such date to occur after the Effective Date and thereafter until the Term Loan Maturity Date, in an amount equal to (i) \$212,328.77 per day multiplied by (ii) the number of days in the calendar month just ended (such amount, the “**Monthly Payment**”), with such Monthly Payment to be applied first to interest then due and owing under Section 2.5(b), and the balance applied to repay principal outstanding under the Term Loans (as adjusted from time to time pursuant to Section 2.8(a) and Section 2.8(b)). To the extent not previously repaid, the Borrower shall pay the remaining outstanding principal amount of, and all accrued but unpaid interest on, the Term Loans on the Maturity Date.

Section 2.8. **Prepayments.**

(a) Optional. Subject to Section 5.4, the Borrower may prepay any Loan at any time without premium or penalty. The Borrower shall give the Administrative Agent at least three (3) Business Days prior written notice of the prepayment of any Loan. Each voluntary prepayment of Loans shall be in an aggregate minimum amount of \$100,000 and integral multiples of \$1,000 in excess thereof.

(b) Mandatory.

(i) Collateral Properties Release Event. Upon the release of the Liens created by the Security Documents on a Collateral Property pursuant to Section 4.2(a), in connection with the sale of either (i) such Collateral Property or (ii) the Equity Interests of the Person that owns such Collateral Property, in each case, the Borrower shall prepay the Term Loans in an aggregate principal amount equal to the Minimum Release Price for such Collateral Property, such prepayment to be applied to the Term Loans, pro rata in accordance with Section 3.2, for so long as the Term Loans remain outstanding.

(ii) Permitted Unimproved Land, Outparcel and Permitted Unimproved Land Contributions. If at any time the Borrower is required to make a prepayment pursuant to Section 4.2(b), such prepayment to be applied to the Term Loans, pro rata in accordance with Section 3.2, for so long as the Term Loans remain outstanding.

(iii) Excess Cash Flow. Borrower shall repay the Term Loans with Excess Cash Flow when and as required by Section 8.12, with each such prepayment to be applied to the Term Loans, pro rata in accordance with Section 3.2, for so long as the Term Loans remain outstanding.

(iv) Casualty/Condemnation Events. If any Casualty/Condemnation Event occurs with respect to any Collateral Property, the Borrower or the applicable Subsidiary Grantor shall apply such Net Cash Proceeds in accordance with the provisions of Section 8.5; provided that (x) if any Net Cash Proceeds are not so applied within the time period provided in Section 8.5 following receipt of such Net Cash Proceeds, or (y) if any Net Cash Proceeds are no longer intended to be or cannot be so applied at any time after delivery of a notice of a Casualty/Condemnation Event, in either case an amount equal to any such Net Cash Proceeds shall be applied to the prepayment of the Term Loans within ten (10) Business Days thereafter, such prepayment to be applied to the Term Loans, pro rata in accordance with Section 3.2, for so long as the Term Loans remain outstanding.

(v) Application of Mandatory Prepayments. If the Borrower is required to pay any outstanding LIBOR Loans by reason of this Section 2.8(b) prior to the end of the applicable Interest Period therefor, the Borrower shall pay all amounts due under Section 5.4.

(c) No Effect on Derivatives Contracts. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrower's obligations under any Derivatives Contracts entered into with respect to the Loans.

Section 2.9. Late Charges.

So long as the Post-Default Rate is not payable with respect to the Obligations as provided in Section 2.5, if any payment required under this Agreement is not paid within fifteen (15) days after it becomes due and payable, the Borrower shall pay a late charge for late payment to compensate the Lenders for the loss of use of funds and for the expenses of handling the delinquent payment, in an amount equal to three percent (3%) of such delinquent payment. Such late charge shall be paid in any event not later than the due date of the next subsequent installment of principal

and/or interest. In the event the maturity of the Obligations hereunder occurs or is accelerated pursuant to Section 11.2, this Section shall apply only to payments overdue prior to the time of such acceleration. This Section shall not be deemed to be a waiver of the Lenders' right to accelerate payment of any of the Obligations as permitted under the terms of this Agreement.

Section 2.10. Continuation.

So long as there exists no Default or Event of Default, the Borrower may on any Business Day, with respect to any LIBOR Loan, elect to maintain such LIBOR Loan or any portion thereof as a LIBOR Loan by selecting a new Interest Period for such LIBOR Loan. Each Continuation of a LIBOR Loan shall be in an aggregate minimum amount of \$100,000 and integral multiples of \$1,000 in excess of that amount, and each new Interest Period selected under this Section shall commence on the last day of the immediately preceding Interest Period. Each selection of a new Interest Period shall be made by the Borrower giving to the Administrative Agent a Notice of Continuation not later than 11:00 a.m. Central time on the third Business Day prior to the date of any such Continuation. Such notice by the Borrower of a Continuation shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Continuation, specifying (a) the proposed date of such Continuation, (b) the LIBOR Loans and portions thereof subject to such Continuation and (c) the duration of the selected Interest Period, all of which shall be specified in such manner as is necessary to comply with all limitations on Loans outstanding hereunder. Each Notice of Continuation shall be irrevocable by and binding on the Borrower once given. Promptly after receipt of a Notice of Continuation, the Administrative Agent shall notify each Lender of the proposed Continuation. If the Borrower shall fail to select in a timely manner a new Interest Period for any LIBOR Loan in accordance with this Section, such Loan will automatically, on the last day of the current Interest Period therefor, continue as a LIBOR Loan with an Interest Period of one month; provided, however, that if an Event of Default exists, such Loan will automatically, on the last day of the current Interest Period therefor, Convert into a Base Rate Loan notwithstanding the first sentence of Section 2.11 or the Borrower's failure to comply with any of the terms of such Section.

Section 2.11. Conversion.

So long as there exists no Default or Event of Default, the Borrower may on any Business Day, upon the Borrower's giving of a Notice of Conversion to the Administrative Agent by telecopy, electronic mail or other similar form of communication, Convert all or a portion of a Loan of one Type into a Loan of another Type. Each Conversion of Base Rate Loans into LIBOR Loans shall be in an aggregate minimum amount of \$100,000 and integral multiples of \$1,000 in excess of that amount, and upon Conversion of a Base Rate Loan into a LIBOR Loan, the Borrower shall pay accrued interest to the date of Conversion on the principal amount so Converted in accordance with Section 2.5. Any Conversion of a LIBOR Loan into a Base Rate Loan shall be made on, and only on, the last day of an Interest Period for such LIBOR Loan. Each such Notice of Conversion shall be given not later than 11:00 a.m. Central time one (1) Business Day prior to the date of any proposed Conversion into Base Rate Loans and three (3) Business Days prior to the date of any proposed Conversion into LIBOR Loans. Promptly after receipt of a Notice of Conversion, the Administrative Agent shall notify each Lender of the proposed Conversion. Subject to the restrictions specified above, each Notice of Conversion shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Conversion

specifying (a) the requested date of such Conversion, (b) the Type of Loan to be Converted, (c) the portion of such Type of Loan to be Converted, (d) the Type of Loan such Loan is to be Converted into and (e) if such Conversion is into a LIBOR Loan, the requested duration of the Interest Period of such Loan. Each Notice of Conversion shall be irrevocable by and binding on the Borrower once given.

Section 2.12. Notes.

(a) Notes. To the extent requested by any Term Loan Lender, the Term Loan made by a Term Loan Lender shall, in addition to this Agreement, also be evidenced by a Term Note, payable to such Term Loan Lender and its registered assigns in a principal amount equal to the amount of its Term Loan and otherwise duly completed.

(b) Records. The date, amount, interest rate and duration of Interest Periods (if applicable) of each Loan made by each Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded or otherwise evidenced by one or more accounts or records in the ordinary course of business by such Lender and the Administrative Agent and such entries shall be binding on the Borrower absent manifest error; provided, however, that (i) any failure to so record or any error in doing so shall not limit or otherwise affect the obligations of the Borrower under any of the Loan Documents to pay any amount owing with respect to the Obligations and (ii) if there is a discrepancy between such accounts and records maintained by any Lender and the accounts and records maintained by the Administrative Agent, in the absence of manifest error, the accounts and records maintained by the Administrative Agent shall be controlling.

(c) Lost, Stolen, Destroyed or Mutilated Notes. Upon receipt by the Borrower of (i) written notice from a Lender that a Note of such Lender has been lost, stolen, destroyed, mutilated, inappropriately cancelled or inappropriately marked, and (ii) (A) in the case of loss, theft or destruction, an unsecured agreement of indemnity from such Lender in form reasonably satisfactory to the Borrower, or (B) in the case of mutilation, inappropriate cancellation or inappropriate marking, upon surrender and cancellation of such Note, the Borrower shall at no expense to the Borrower execute and deliver to such Lender a new Note, identical in form and substance and dated the date of such lost, stolen, destroyed, mutilated, inappropriately cancelled or inappropriately marked Note.

Section 2.13. Extension of Initial Maturity Date.

(a) The Initial Maturity Date shall be automatically extended to the First Extended Maturity Date upon satisfaction of the following conditions, as of the Initial Maturity Date:

(i) no Default under Section 11.1(a), Section 11.1(e) or Section 11.1(f) shall exist, and no Event of Default has all have occurred and be continuing;

(ii) the Borrower would have made commercially reasonable efforts to have the Company receive an updated Environmental Insurance Policy with a termination date no earlier than the First Extended Maturity Date and, to the extent received, the Administrative Agent shall have received, in form and substance to the reasonable

satisfaction of the Administrative Agent, an updated Environmental Insurance Policy with substantially similar terms regarding the scope of coverage and coverage limitations as the existing Environmental Insurance Policy in favor of the Borrower with a termination date no earlier than the First Extended Maturity Date; and

(iii) the aggregate outstanding principal amount of the Term Loans shall be less than or equal to \$670,000,000.

(b) If the Initial Maturity Date is successfully extended pursuant to clause (a) above, then the First Extended Maturity Date shall be automatically extended to the Second Extended Maturity Date upon satisfaction of the following conditions, as of the First Extended Maturity Date:

(i) no Default under Section 11.1(a), Section 11.1(e) or Section 11.1(f) shall exist, and no Event of Default has all have occurred and be continuing;

(ii) the Borrower would have made commercially reasonable efforts to have the Company receive an updated Environmental Insurance Policy with a termination date no earlier than the Second Extended Maturity Date and, to the extent received, the Administrative Agent shall have received, in form and substance to the reasonable satisfaction of the Administrative Agent, an updated Environmental Insurance Policy with substantially similar terms regarding the scope of coverage and coverage limitations as the existing Environmental Insurance Policy in favor of the Borrower with a termination date no earlier than the Second Extended Maturity Date; and

(iii) the aggregate outstanding principal amount of the Term Loans shall be less than or equal to \$615,000,000.

Article III. Payments, Fees and Other General Provisions

Section 3.1. Payments.

(a) Payments by the Borrower. Except to the extent otherwise provided herein, all payments of principal, interest, Fees and other amounts to be made by the Borrower under this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds, without setoff, deduction or counterclaim (excluding Taxes required to be withheld pursuant to Section 3.10 and any other amounts withheld as required by Applicable Law), to the Administrative Agent at the Principal Office, not later than 1:00 p.m. Central time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). Subject to Section 11.5, the Borrower shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Administrative Agent the amounts payable by the Borrower hereunder to which such payment is to be applied. Each payment received by the Administrative Agent for the account of a Lender under this Agreement or any Note shall be paid to such Lender by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Lender to the Administrative Agent from time to time, for the account of such Lender at the applicable Lending Office of such Lender. In the event the Administrative Agent fails to pay such amounts to such Lender, within one (1) Business Day of receipt of such amounts,

the Administrative Agent shall pay interest on such amount until paid at a rate per annum equal to the Federal Funds Rate from time to time in effect. If the due date of any payment under this Agreement or any other Loan Document would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall continue to accrue at the rate, if any, applicable to such payment for the period of such extension.

(b) Presumptions Regarding Payments by the Borrower. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may (but shall not be obligated to), in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, severally agrees to repay to the Administrative Agent on demand that amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 3.2. **Pro Rata Treatment.**

Except to the extent otherwise provided herein: (a) [reserved]; (b) [reserved]; (c) the making of Term Loans under Section 2.2 shall be made from the Term Loan Lenders, pro rata according to the amounts of their respective Term Loan commitments; (d) each payment or prepayment of principal of Term Loans shall be made for the account of the Term Loan Lenders pro rata in accordance with the respective unpaid principal amounts of the Term Loans held by them; (e) each payment of interest on Term Loans shall be made for the account of the Term Loan Lenders pro rata in accordance with the amounts of interest on such Term Loans then due and payable to the respective Lenders; and (f) the Conversion and Continuation of Term Loans shall be made pro rata among the Term Loan Lenders according to the amounts of their respective Term Loans and the then current Interest Period for each Lender's portion of each such Loan shall be coterminous. Any payment or prepayment of principal or interest made during the existence of a Default or Event of Default shall be made for the account of the Lenders in accordance with the order set forth in Section 11.5.

Section 3.3. **Sharing of Payments by Lenders.**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations owing to such Lender resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such Obligation greater than the share thereof as provided in Section 3.2 or Section 11.5, as applicable, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other Obligations owing to the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the applicable Lenders ratably in accordance with Section 3.2 or Section 11.5, as applicable; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) [reserved] or (z) any payment obtained by a Lender as consideration for the assignment of, or sale of a participation in, any of its Loans to any assignee or participant, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 3.4. **Several Obligations.**

No Lender shall be responsible for the failure of any other Lender to make a Loan or to perform any other obligation to be made or performed by such other Lender hereunder, and the failure of any Lender to make a Loan or to perform any other obligation to be made or performed by it hereunder shall not relieve the obligation of any other Lender to make any Loan or to perform any other obligation to be made or performed by such other Lender.

Section 3.5. **Fees.**

(a) Closing Fee. On the Effective Date, the Borrower agrees to pay to the Administrative Agent and each Lender all fees then due and payable as have been agreed to in writing by the Borrower and the Administrative Agent in the Fee Letters or otherwise.

(b) Administrative and Other Fees. The Borrower agrees to pay the administrative and other fees of the Administrative Agent as provided in the Fee Letters and as may be otherwise agreed to in writing from time to time by the Borrower and the Administrative Agent.

Section 3.6. **Computations.**

Unless otherwise expressly set forth herein, any accrued interest on any Loan, any Fees or any other Obligations due hereunder shall be computed for the actual number of days elapsed on the basis of a year of 360 days, except interest on Base Rate Loans shall be computed on the basis of a year of 365 or 366 days, as applicable.

Section 3.7. **Usury.**

In no event shall the amount of interest due or payable on the Loans or other Obligations exceed the maximum rate of interest allowed by Applicable Law and, if any such payment is paid

by the Borrower or any other Loan Party or received by any Lender, then such excess sum shall be credited as a payment of principal, unless the Borrower shall notify the respective Lender in writing that the Borrower elects to have such excess sum returned to it forthwith. It is the express intent of the parties hereto that the Borrower not pay and the Lenders not receive, directly or indirectly, in any manner whatsoever, interest in excess of that which may be lawfully paid by the Borrower under Applicable Law. The parties hereto hereby agree and stipulate that the only charge imposed upon the Borrower for the use of money in connection with this Agreement is and shall be the interest specifically described in Section 2.5(a)(i) and Section 2.5(a)(ii). Notwithstanding the foregoing, the parties hereto further agree and stipulate that all agency fees, facility fees, closing fees, default charges, late charges, funding or “breakage” charges, increased cost charges, attorneys’ fees and reimbursement for costs and expenses paid by the Administrative Agent or any Lender to third parties or for damages incurred by the Administrative Agent or any Lender, in each case, in connection with the transactions contemplated by this Agreement and the other Loan Documents, are charges made to compensate the Administrative Agent or any such Lender for underwriting or administrative services and costs or losses performed or incurred, and to be performed or incurred, by the Administrative Agent and the Lenders in connection with this Agreement and shall under no circumstances be deemed to be charges for the use of money. All charges other than charges for the use of money shall be fully earned and non-refundable when due.

Section 3.8. **Statements of Account.**

The Administrative Agent will account to the Borrower monthly with a statement of Loans, accrued interest and Fees, charges and payments made pursuant to this Agreement and the other Loan Documents, and such account rendered by the Administrative Agent shall be deemed conclusive upon the Borrower absent manifest error. The failure of the Administrative Agent to deliver such a statement of accounts shall not relieve or discharge the Borrower from any of its obligations hereunder.

Section 3.9. **Defaulting Lenders.**

Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(a) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Requisite Lenders and in Section 13.7.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XI or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion

thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this subsection shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents thereto.

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause, as applicable, the Term Loans to be held by the Term Loan Lenders pro rata as if there had been no Term Loan Lenders that were Defaulting Lenders, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that, subject to Section 13.24, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(g) [Reserved].

(h) Purchase of Defaulting Lender's Loans. During any period that a Lender is a Defaulting Lender, the Borrower may, by the Borrower giving written notice thereof to the Administrative Agent, such Defaulting Lender and the other Lenders, demand that such Defaulting Lender assign its Loans to an Eligible Assignee subject to and in accordance with the provisions of Section 13.6(b). No party hereto shall have any obligation whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. In addition, any Lender who is not a Defaulting Lender may, but shall not be obligated, in its sole discretion, to acquire the face amount of all or a portion of such Defaulting Lender's Loans via an assignment subject to and in accordance with the provisions of Section 13.6(b). In connection with any such assignment, such Defaulting Lender shall promptly execute all documents reasonably requested to effect such

assignment, including an appropriate Assignment and Assumption and, notwithstanding Section 13.6(b), shall pay to the Administrative Agent an assignment fee in the amount of \$7,500. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent or any of the Lenders.

Section 3.10. Taxes; Foreign Lenders.

(a) FATCA. For purposes of this Section, the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any other Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower or other applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Borrower and the other Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Borrower. The Borrower and the other Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (other than any penalties resulting from the gross negligence or willful misconduct of such Recipient, as determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted therefrom), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), accompanied by a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower or another Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower and the other Loan Parties to do so), (ii) any Taxes attributable to

such Lender's failure to comply with the provisions of Section 13.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this subsection. The provisions of this subsection shall continue to inure to the benefit of an Administrative Agent following its resignation or removal as Administrative Agent.

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or any other Loan Party to a Governmental Authority pursuant to this Section, the Borrower or such other Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in the immediately following clauses (ii)(A), (ii)(B) and (ii)(D)) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic

copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(II) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8ECI (or any successor form);

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “**U.S. Tax Compliance Certificate**”) and (y) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form); or

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY (or any successor form), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor form), as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or

Exhibit M-3, IRS Form W-9 (or any successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if a Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Status of Administrative Agent. If the Administrative Agent is not a United States person within the meaning of Section 7701(a)(30) of the Code, the Administrative Agent shall deliver to the Borrower on or prior to the date on which it becomes the Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower): (i) executed originals of IRS Form W-8ECI with respect to any amounts payable to the Administrative Agent for its own account, and (ii) executed originals of IRS Form W-8IMY with respect to any amounts payable to the Administrative Agent for the account of others, certifying

that it is a “U.S. branch,” that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business within the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. person with respect to such payments (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a U.S. person with respect to such payments as contemplated by Section 1.1441-1(b)(2)(iv) of the United States Treasury Regulations).

(i) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes (including any Tax credit in lieu of refund) as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments or the payments of such additional amounts made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (i) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (i), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (i) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(j) Survival. Each party’s obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Article IV. Collateral Properties

Section 4.1. Eligibility of Properties.

(a) Initial Collateral Properties. The Properties identified on Schedule 4.1(a) shall, on the Effective Date, be Collateral Properties, with the Allocated Loan Amount as agreed to between the Requisite Lenders and the Borrower as set forth on Schedule 4.1(a).

(b) Additional Collateral Properties. If after the Effective Date, the Borrower desires that the Lenders include any additional Property as a Collateral Property, the Borrower shall so notify the Administrative Agent in writing. No Property will be evaluated by the Lenders unless and until (x) such Property satisfies the criteria set forth in the definition of “Eligible Property” and (y) the Borrower delivers to the Administrative Agent (and the Administrative

Agent shall promptly make available to the Lenders) the items set forth on Schedule 4.1(b), each in form and substance reasonably satisfactory to the Administrative Agent and each Lender. For the avoidance of doubt, the inclusion of any additional Property as a Collateral Property shall not increase any of the obligations of the Lenders under this Agreement, including, without limitation, the obligation to fund any additional amounts to the Borrower.

(c) Final Approval. Upon its receipt and review of the documents and information set forth in the preceding subsection (b), if the Administrative Agent shall recommend approval and acceptance of such Property as a Collateral Property, the Administrative Agent will so notify the Borrower and each Lender within ten (10) Business Days after receipt and review of all of such documents and information. If after such review, the Administrative Agent is unwilling to recommend approval and acceptance of such Property as a Collateral Property, the Administrative Agent shall promptly notify the Borrower and the Lenders and the consideration by the Administrative Agent and the Lenders of such Property shall cease. Within ten (10) Business Days after the date on which a Lender has received all of the items referred to in the preceding subsection (b) and the Administrative Agent's recommendation of approval pursuant to this Section 4.1(c), such Lender shall notify the Administrative Agent in writing whether or not such Lender accepts such Property as a Collateral Property. If a Lender fails to give such notice within such time period, such Lender shall be deemed to have approved such Property as a Collateral Property. Such Property shall become a Collateral Property subject to satisfaction or waiver of the following conditions:

- (i) the Administrative Agent shall have received:
 - (A) written or deemed approval of Lenders comprising the Super-Majority Lenders;
 - (B) if such property is owned by a Subsidiary of the Borrower or a Subsidiary Grantor, all of the items required to be delivered to the Administrative Agent under Section 8.14(a) if not previously delivered;
 - (C) a certificate of a Senior Officer certifying that the Borrower is in compliance with the covenants contained in Section 10.1, in each case both immediately prior to and after giving effect to the addition of such Collateral Property, on a pro forma basis; and
 - (D) such other items or documents as may be appropriate under the circumstances including, without limitation, the items (or, if applicable, updates to the items) set forth on Schedule 4.1(b), each in form and substance reasonably satisfactory to the Administrative Agent; and
- (ii) all other conditions reasonably required by the Administrative Agent.

Section 4.2. **Release of Collateral Properties.**

(a) Borrower Requests for Property Releases. From time to time the Borrower may request, upon not less than thirty (30) days prior written notice to the Administrative Agent

(or such shorter period as may be acceptable to the Administrative Agent), that any Collateral Property be released from the Liens created by the Security Documents applicable thereto in connection with the disposition to an unaffiliated third party purchaser on an arms'-length basis of such Collateral Property or the Equity Interests of a Subsidiary of the Borrower that holds title thereto (a "Property Owner") or a Subsidiary that has no assets other than the Equity Interest of a Property Owner, which release (the "Property Release") shall be effective upon the satisfaction or waiver of the following conditions:

(i) the Administrative Agent shall have (A) received (x) a certificate signed by a Senior Officer, certifying as to the matters set forth in subsection (ii)–(vii) of this Section 4.2(a) and providing supporting documentation for the covenant compliance described in subsection (iv) of this Section 4.2(a) and (y) any other documents and instruments reasonably requested by the Administrative Agent in connection with such Property Release (including, without limitation, applicable updates to any of the items set forth on Schedule 4.1(b), each in form and substance reasonably satisfactory to the Administrative Agent) and (B) if the Collateral Property being released is encumbered by a Mortgage that will continue to encumber another Collateral Property after such release, approved the boundaries and legal description of the applicable Collateral Property subject to such Property Release (in addition to any other Collateral Properties that are subject to the Mortgage applicable to such Collateral Property) and confirmed and received a date down endorsement to the applicable Title Policy applicable to such Collateral Property to bring forward the date of such Title Policy (and all endorsements thereto) to the date of such Property Release and insuring the continuing priority of the Lien pursuant to such Mortgage on any Collateral Properties covered thereunder that are not subject to such Property Release;

(ii) The Borrower shall have paid the Minimum Release Price with respect to such Collateral Property, unless a lower amount is consented to by Super-Majority Lenders; it being understood that any repayment made pursuant to this Section shall not be credited against the monthly amortization of the Loans required to be made under Section 2.7(b) (but shall reduce the outstanding principal amount of the Loans);

(iii) No Default or Event of Default has occurred and is continuing prior to or at the time of such Property Release or would result after giving effect to such Property Release;

(iv) The Loan Parties are in compliance with the covenants contained in this Section 4.2(a) and Section 10.1, in each case on a pro forma basis both immediately prior to and after giving effect to such Property Release (and any prepayment to be made in accordance with Section 2.8(b)(ii) have been made and/or the acceptance of any Collateral Property as an additional or replacement Collateral Property to be given concurrently with such Property Release in accordance with Section 4.1);

(v) All representations and warranties in the Loan Documents are true and accurate in all material respects (except that, to the extent any representation or warranty is qualified by materiality or Material Adverse Effect or similar language, such

representation or warranty shall be true and correct in all respects) at the time of such Property Release and immediately after giving effect to such Property Release, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except that, to the extent any such representation or warranty is qualified by materiality or Material Adverse Effect or similar language, such representation or warranty shall have been true and correct in all respects) on and as of such earlier date);

(vi) At least ten (10) Properties shall be Collateral Properties at all times during the term of the Facility; and

(vii) To the extent that such Collateral Property is a Required Collateral Property, the Requisite Lenders shall have consented to such Property Release.

(b) Permitted Sales and Transfers. Notwithstanding the foregoing subsection (a), the Borrower or a Subsidiary Grantor may (x) sell or transfer to any Person that is not an Affiliate of the Borrower any portion of a Collateral Property constituting Unimproved Land or (y) effect a Permitted Unimproved Land Contribution, in each case, with an Unimproved Land value of less than or equal to \$3,500,000 individually or \$30,000,000 in the aggregate for all such Properties during the term of the Facilities (which valuation shall, in each case, be reasonably acceptable to the Administrative Agent and, if requested by the Administrative Agent, the Borrower shall provide the Administrative Agent with market comparables and a broker opinion of value therefor) and have such Unimproved Land released from the Lien of the Security Documents applicable thereto promptly following any written request for such release; provided that the following conditions shall be satisfied or waived:

(i) to the extent any of the other requirements of this Section 4.2(b) shall not be satisfied, the Administrative Agent shall have provided its prior written consent to such sale or Permitted Unimproved Land Contribution, as the case may be;

(ii) the conditions set forth in Section 4.2(a)(iii), Section 4.2(a)(iv), Section 4.2(a)(v), and Section 4.2(a)(vi) above are satisfied; and

(iii) the Borrower shall have prepaid the Term Loans in accordance with Section 2.8(b)(iii) for so long as the Term Loans remain outstanding in an aggregate amount equal to not less than 100% of the Net Cash Proceeds (if any, in the case of any Permitted Unimproved Land Contribution) received by the Borrower, any Subsidiary Grantor or any other Subsidiary of the Borrower from such sale or Permitted Unimproved Land Contribution, as the case may be.

(c) Continuity of Liens. Except as set forth in this Section 4.2, no Collateral Property shall be released from the Liens created by the Security Documents applicable thereto.

Section 4.3. **Frequency of Appraisals.**

The Appraised Value of a Collateral Property shall be determined or redetermined, as applicable, pursuant to Appraisals conducted under each of the following circumstances:

- (a) In connection with the acceptance of a Property as a Collateral Property pursuant to Section 4.1(b);
- (b) If any Default or Event of Default has occurred and is continuing, upon written request from the Administrative Agent to the Borrower; or
- (c) If necessary in order to comply with FIRREA or other Applicable Law relating to the Administrative Agent or the Lenders.

All Appraisals shall be engaged by the Administrative Agent at the Borrower's expense and shall be subject to satisfactory review and approval of the Administrative Agent. Notwithstanding anything to the contrary herein, each Lender may conduct Appraisals of any Property at any time at such Lender's expense; provided that, for the avoidance of doubt, such Appraisal shall not be used in determining or redetermining the Appraised Value, Allocated Loan Amount or Minimum Release Price of a Collateral Property.

Section 4.4. **MIRE Events.**

Notwithstanding anything to the contrary set forth herein, no MIRE Event may be closed until the applicable Loan Parties receive (i) a completed flood hazard determination from a third party vendor and (ii) if any Property is located in a "special flood hazard area", (A) a notification to the applicable Loan Parties of that fact and (B) if required by applicable Flood Laws, evidence of required flood insurance with respect to which flood insurance has been made available under applicable Flood Laws or notification to that flood insurance coverage is not available.

Article V. Yield Protection, Etc.

Section 5.1. **Additional Costs; Capital Adequacy.**

(a) Capital Adequacy. If any Lender determines that any Regulatory Change affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity ratios or requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time within thirty (30) calendar days after written demand by such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(b) Additional Costs. In addition to, and not in limitation of the immediately preceding subsection (a), the Borrower shall following fifteen (15) days written demand therefor

pay to the Administrative Agent on its own account or for the account of a Lender from time to time such amounts as the Administrative Agent or such Lender may reasonably determine to be necessary to compensate the Administrative Agent or such Lender for any costs incurred by the Administrative Agent or such Lender that it reasonably determines are attributable to its making of or maintaining, continuing or converting any Loans or its obligation to make, maintain, continue or convert any Loans hereunder, any reduction in any amount receivable by the Administrative Agent or such Lender under this Agreement or any of the other Loan Documents in respect of any of such Loans or such obligation or the maintenance by the Administrative Agent or such Lender of capital or liquidity in respect of its Loans (such increases in costs and reductions in amounts receivable being herein called “**Additional Costs**”), resulting from any Regulatory Change that:

(i) changes the basis of taxation of any amounts payable to the Administrative Agent or such Lender under this Agreement or any of the other Loan Documents in respect of any of such Loans (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes);

(ii) imposes or modifies any reserve, special deposit, liquidity, compulsory loan, insurance charge or similar requirements (other than Regulation D of the Board of Governors of the Federal Reserve System or other similar reserve requirement applicable to any other category of liabilities or category of extensions of credit or other assets by reference to which the interest rate on LIBOR Loans is determined to the extent utilized when determining LIBOR for such Loans) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, or other credit extended by, or any other acquisition of funds by such Lender (or its parent corporation), or any commitment of such Lender; or

(iii) imposes on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loans made by such Lender.

(c) Lender’s Suspension of LIBOR Loans. Without limiting the effect of the provisions of the immediately preceding subsection (a) and (b), if by reason of any Regulatory Change, any Lender either (i) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Lender that includes deposits by reference to which the interest rate on LIBOR Loans is determined as provided in this Agreement or a category of extensions of credit or other assets of such Lender that includes LIBOR Loans or (ii) becomes subject to restrictions on the amount of such a category of liabilities or assets that it may hold, then, if such Lender so elects by notice to the Borrower (with a copy to the Administrative Agent), the obligation of such Lender to make or Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended until such Regulatory Change ceases to be in effect (in which case the provisions of Section 5.5 shall apply).

(d) [Reserved].

(e) Notification and Determination of Additional Costs. Each of the Administrative Agent and each Lender, as the case may be, agrees to notify the Borrower (and in

the case of a Lender, to notify the Administrative Agent) of any event occurring after the Agreement Date entitling the Administrative Agent or such Lender to compensation under any of the preceding subsections of this Section as promptly as practicable. The failure of the Administrative Agent, or any Lender to give such notice shall not release the Borrower from any of its obligations hereunder; provided, however, that if the Administrative Agent or such Lender shall fail to give such notice within forty-five (45) days after it obtains actual knowledge of such event, then the Administrative Agent or such Lender, as the case may be, shall only be entitled to compensation under any of the preceding subsections for compensable amounts attributable to such event arising following the date the Administrative Agent or such Lender, as the case may be, obtains actual knowledge of such event. The Administrative Agent and each Lender, as the case may be, agrees to furnish to the Borrower (and in the case of a Lender to the Administrative Agent as well) a certificate setting forth the basis and amount of each request for compensation under this Section. Determinations by the Administrative Agent or such Lender, as the case may be, of the effect of any Regulatory Change shall be conclusive and binding for all purposes, provided that such determinations are made on a reasonable basis and in good faith. The Borrower shall pay the Administrative Agent or any such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.2. **Changed Circumstances.**

(a) Circumstances Affecting LIBOR Availability. Anything herein to the contrary notwithstanding, unless and until a Benchmark Replacement is implemented in accordance with clause (b) below, if, on or prior to the determination of LIBOR for any Interest Period:

(i) the Administrative Agent shall determine (which determination shall be conclusive) that reasonable and adequate means do not exist for ascertaining LIBOR for such Interest Period;

(ii) the Administrative Agent reasonably determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the definition of LIBOR are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR Loans as provided herein; or

(iii) the Requisite Lenders determine (which determination shall be conclusive) that the relevant rates of interest referred to in the definition of LIBOR upon the basis of which the rate of interest for LIBOR Loans for such Interest Period is to be determined are not likely to adequately cover the cost to any such Lender of making or maintaining LIBOR Loans for such Interest Period;

then the Administrative Agent shall give the Borrower and each Lender prompt notice thereof. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, the obligation of the Lenders to make LIBOR Loans and the right of the Borrower to continue any Loan as a LIBOR Loan or Convert Loans into LIBOR Loans shall be suspended, and the Borrower shall either (A) Convert the then outstanding principal amount of each such LIBOR Loan to a Base Rate Loan as of the last day of such Interest Period or (B) repay in full (or cause to

be repaid in full) the then outstanding principal amount of each such LIBOR Loan together with accrued interest thereon, on the last day of the then current Interest Period applicable to such LIBOR Loan.

(b) Benchmark Replacement.

(i) Benchmark Setting.

(A) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) or clause (c) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Requisite Lenders. If an Unadjusted Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(B) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 5.2(b)(iv) below and (E) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 5.2(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 5.2(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a borrowing of, conversion to or continuation of LIBOR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and,

failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(vi) London Interbank Offered Rate Benchmark Transition Event. On March 5, 2021, the IBA, the administrator of the London interbank offered rate, and the FCA, the regulatory supervisor of the IBA, made the Announcements that the final publication or representativeness date for Dollars for (I) 1-week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (II) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the IBA was identified in such Announcements. The parties hereto agree and acknowledge that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement and that any obligation of the Administrative Agent to notify any parties of such Benchmark Transition Event pursuant to clause (iii) of this Section 5.2(b) shall be deemed satisfied.

Section 5.3. **Illegality.**

If, in any applicable jurisdiction, the Administrative Agent or any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent or any Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund or maintain its participation in any Loan or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Loan, such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Borrower, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Loan shall be suspended, and to the extent required by Applicable Law, cancelled. Upon receipt of such notice, the Loan Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Borrower or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by Applicable Law) and (B) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

Section 5.4. **Compensation.**

The Borrower shall pay to the Administrative Agent for the account of each Lender, upon the request of the Administrative Agent, such amount or amounts as the Administrative Agent shall determine in its reasonable discretion shall be sufficient to compensate such Lender for any loss, cost or expense attributable to:

(a) any payment or prepayment (whether mandatory or optional) of a LIBOR Loan or Conversion of a LIBOR Loan, made by such Lender for any reason (including, without

limitation, acceleration or the exercise by the Borrower of its rights under Section 5.6) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower for any reason to borrow a LIBOR Loan from such Lender on the date for such borrowing, or to Convert a Base Rate Loan into a LIBOR Loan or Continue a LIBOR Loan on the requested date of such Conversion or Continuation.

Not in limitation of the foregoing, such compensation shall include, without limitation; in the case of a LIBOR Loan, an amount equal to the then present value of (A) the amount of interest that would have accrued on such LIBOR Loan for the remainder of the Interest Period at the rate applicable to such LIBOR Loan, less (B) the amount of interest that would accrue on the same LIBOR Loan for the same period if LIBOR were set on the date on which such LIBOR Loan was repaid, prepaid or Converted or the date on which the Borrower failed to borrow, Convert or Continue such LIBOR Loan, as applicable, calculating present value by using as a discount rate LIBOR quoted on such date. Upon the Borrower's request, the Administrative Agent shall provide the Borrower with a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof. Any such statement shall be conclusive absent manifest error.

Section 5.5. **Treatment of Affected Loans.**

If the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1(c), Section 5.2, or Section 5.3 then such Lender's LIBOR Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for LIBOR Loans (or, in the case of a Conversion required by Section 5.1(c), Section 5.2, or Section 5.3 on such earlier date as such Lender or the Administrative Agent, as applicable, may specify to the Borrower (with a copy to the Administrative Agent, as applicable)) and, unless and until such Lender or the Administrative Agent, as applicable, gives notice as provided below that the circumstances specified in Section 5.1, Section 5.2, or Section 5.3 that gave rise to such Conversion no longer exist:

(i) to the extent that such Lender's LIBOR Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or Continued by such Lender as LIBOR Loans shall be made or Continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be Converted into LIBOR Loans shall remain as Base Rate Loans.

If such Lender, or the Administrative Agent, as applicable, gives notice to the Borrower (with a copy to the Administrative Agent, as applicable) that the circumstances specified in Section 5.1(c), Section 5.2 or Section 5.3 that gave rise to the Conversion of such Lender's LIBOR Loans pursuant to this Section no longer exist (which such Lender or the Administrative Agent, as applicable, agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Loans made by other Lenders are outstanding, then such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such

outstanding LIBOR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding LIBOR Loans and by such Lender are held pro rata (as to principal amounts, Types and Interest Periods) in accordance with their respective Pro Rata Share.

Section 5.6. Affected Lenders.

If (a) a Lender requests compensation pursuant to Section 3.10 or Section 5.1, and the Requisite Lenders are not also doing the same or (b) the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1(c) or Section 5.3 but the obligation of the Requisite Lenders shall not have been suspended under such Sections, and in the case of clause (a) or (b) such Lender has declined or is unable to designate a different Lending Office in accordance with Section 5.7, or (c) a Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, so long as there does not then exist any Default or Event of Default, demand that such Lender, and upon such demand such Lender shall promptly, assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.6(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.10 or Section 5.1 and rights to indemnification under Section 13.10) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 13.6(b)(iv);

(ii) such Lender shall have received payment of (x) the aggregate principal balance of all Loans then owing to such Lender, plus (y) [reserved], plus (z) any accrued but unpaid interest thereon and accrued but unpaid fees owing to such Lender, or any other amount as may be mutually agreed upon by such Lender and Eligible Assignee;

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.1 or payments required to be made pursuant to Section 3.10, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable consent, approval, amendment or waiver.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each of the Administrative Agent and each affected Lender shall reasonably cooperate in effectuating the replacement of such Lender under this Section, but at no time shall the Administrative Agent, such Lender nor any other Lender be obligated in any way whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent, such Lender or any

of the other Lenders; provided, however, that the Borrower shall not be obligated to reimburse or otherwise pay any such Lender's administrative or legal costs incurred as a result of the Borrower's exercise of its rights under this Section. The terms of this Section shall not in any way limit the Borrower's obligation to pay to any such Lender compensation owing to such Lender pursuant to Sections 3.10, 5.1 or 5.4 with respect to any matters or events existing on or prior to the date any such Lender ceases to be a party to this Agreement.

Section 5.7. Change of Lending Office.

If any Lender requests compensation under Section 5.1, or requires the Borrower or any Loan Party to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.10, then such Lender shall (at the written request of the Borrower) use reasonable best efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.10 or Section 5.1, as the case may be, in the future, and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 5.8. Assumptions Concerning Funding of LIBOR Loans.

Calculation of all amounts payable to a Lender under this Article V shall be made as though such Lender had actually funded LIBOR Loans through the purchase of deposits in the relevant market bearing interest at the rate applicable to such LIBOR Loans in an amount equal to the amount of the LIBOR Loans and having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumption shall be used only for calculation of amounts payable under this Article.

Article VI. Conditions Precedent

Section 6.1. Initial Conditions Precedent.

The obligation of the Lenders to effect or permit the occurrence of the first making of a Loan is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent:

- (i) counterparts of this Agreement executed by each of the parties hereto;
- (ii) Term Notes executed by the Borrower, payable to each applicable Lender that has requested that it receive Notes;
- (iii) the Parent Guaranty executed by the Parent;

- (iv) the REIT Bad-Act Guaranty executed by the Company;
- (v) the Guaranty executed by each Subsidiary Guarantor;
- (vi) (i) the Collateral Agreement, executed by each Subsidiary Grantor (other than a Limited Grantor), and (ii) each other Security Document, executed by the parties thereto;
- (vii) deposit account control agreements with respect to each Collateral Property-level account, as well as any accounts of Borrower or Subsidiary Guarantors;
- (viii) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of the Parent and each Loan Party certified as of a recent date by the Secretary of State of the state of formation of such Person;
- (ix) a certificate of good standing (or certificate of similar meaning) with respect to the Parent and each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Person;
- (x) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party and the Parent with respect to each of the officers of such Person authorized to execute and deliver the Loan Documents to which such Person is a party, and in the case of the Borrower, authorized to execute and deliver on behalf of the Borrower Notices of Borrowing, Notices of Conversion and Notices of Continuation;
- (xi) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party and the Parent of (A) the by-laws of such Person, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by such Person to authorize the execution, delivery and performance of the Loan Documents to which it is a party;
- (xii) to the extent not already in the possession of the Administrative Agent, (A) original stock certificates or other certificates evidencing the certificated Equity Interests, as applicable, pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note, as applicable, pledged pursuant to the Security Documents together with an undated allonge for each such promissory note duly executed in blank by the holder thereof;
- (xiii) evidence of property, business interruption and liability insurance covering each Collateral Property, evidence of payment of all insurance premiums for the current policy year of each policy (with appropriate endorsements naming the Administrative Agent as lender's loss payee and mortgagee on all policies for property hazard insurance and as additional insured on all policies for liability insurance), in each

case, in form and substance reasonably acceptable to the Administrative Agent, and if requested by the Administrative Agent, copies of such insurance policies;

(xiv) any other documents reasonably requested thereby or as required by the terms of the Security Documents to perfect or evidence its security interest in the Collateral (including, without limitation, any landlord waivers or collateral access agreements, notices and assignments of claims required under Applicable Laws, bailee or warehouseman letters or filings with any applicable Governmental Authority);

(xv) [Reserved]

(xvi) a certificate signed by the Chief Financial Officer of the general partner of the Parent (A) certifying that the conditions specified in Section 6.1(b) have been satisfied, and (B) identifying the Collateral Properties as of the Effective Date;

(xvii) the obligations under the Existing Credit Agreement shall have been repaid, refinanced or otherwise discharged or terminated, which shall include a cash payment in the amount of no less than \$100,000,000 by the Parent to be applied to the Existing Credit Agreement and extinguishment of [\$133,000,000] of Indebtedness held by crossholders, and any liens securing such obligations shall have been terminated and the Administrative Agent shall have received reasonably satisfactory evidence of the foregoing;

(xviii) (x) issuance by the Bankruptcy Court of an order confirming the Chapter 11 Plan on terms acceptable to the Requisite Lenders and the Debtors (the “**Confirmation Order**”), (y) the Confirmation Order being in full force and effect and not subject to stay and (z) the occurrence of the Chapter 11 Plan Effective Date;

(xix) the results of a recent lien search in each of the jurisdictions in which UCC financing statement or other filings or recordations should be made to evidence or perfect security interests in all assets of the Loan Parties, and such search shall reveal no Liens on any Collateral, except for Permitted Liens;

(xx) evidence that the Fees, if any, then due and payable under Section 3.5, together with all other fees, expenses and reimbursement amounts due and payable to the Administrative Agent and any of the Lenders, including, without limitation, the fees and expenses of counsel to the Administrative Agent, have been paid;

(xxi) copies of all Material Contracts in existence on the Agreement Date, if any;

(xxii) such other documents, agreements and instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request;

(b) the Borrower and each other Loan Party shall have provided all information requested by the Administrative Agent and each Lender in order to comply with applicable “know

your customer” and Anti-Money Laundering Laws, including, without limitation, the Patriot Act, as determined in the good faith judgment of the Administrative Agent;

(c) at least five (5) days prior to the Agreement Date, the Borrower shall deliver, on behalf of itself and any Guarantor that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to itself and to such Guarantor, to each Lender that so requests such a Beneficial Ownership Certification; and

(d) subject to Section 8.19, the Administrative Agent shall have a first priority perfected security interest in all of the Collateral (to the extent required in the Security Documents).

Section 6.2. **[Reserved]**.

Article VII. Representations and Warranties

Section 7.1. Representations and Warranties.

In order to induce the Administrative Agent and each Lender to enter into this Agreement and to make Loans, the Borrower represents and warrants to the Administrative Agent and each Lender on the Effective Date as follows:

(a) Organization; Power; Qualification. Each of the Loan Parties and the other Subsidiaries is a corporation, limited liability company, partnership or other legal entity, duly organized or formed, validly existing and in good standing under the jurisdiction of its incorporation or formation, has the power and authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a domestic or foreign corporation, partnership or other legal entity, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect. None of the Borrower or any of its Subsidiaries is an Affected Financial Institution.

(b) Ownership Structure. Part I of Schedule 7.1(b) is, as of the Effective Date, a complete and correct list of each Loan Party, setting forth for each such Person, (i) the jurisdiction of organization of such Person, (ii) each Person (other than any Person holding any direct or indirect Equity Interests in the Parent, CBL Holdings I, Inc. and CBL Holdings II, Inc.) holding any direct or indirect Equity Interest in such Person, (iii) the nature of the Equity Interests held by each such Person, (iv) the percentage of ownership of such Person represented by such Equity Interests, and (v) whether such Person is the Parent, the Borrower, a Subsidiary Guarantor and/or a Subsidiary Grantor. As of the Effective Date, except as disclosed in such Schedule, (A) each of the Borrower and its Subsidiaries owns, free and clear of all Liens (other than Permitted Liens of the types described in clause (a) of the definition of the term “Permitted Liens”), and has the unencumbered right to vote, all outstanding Equity Interests in each Person shown to be held by it on Part I of Schedule 7.1(b), (B) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and non-assessable and (C) there are no outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including, without limitation, any stockholders’ or voting trust agreements) for the

issuance, sale, registration or voting of, or outstanding securities convertible into, any additional shares of capital stock of any class, or partnership or other Equity Interests of any type in, any such Person. As of the Effective Date, Part II of Schedule 7.1(b) correctly sets forth all Persons which own a Collateral Property, including the correct legal name of such Person, the type of legal entity which each such Person is, and all Equity Interests in such Person held directly or indirectly by the Borrower.

(c) Authorization of Loan Documents and Borrowings. The Borrower has the right and power, and has taken all necessary corporate, limited liability company, or partnership action required to authorize it, to borrow hereunder. The Borrower and each other Loan Party has the right and power, and has taken all necessary corporate, limited liability company, or partnership action required to authorize it, to execute, deliver and perform each of the Loan Documents to which it is a party in accordance with their respective terms and to consummate the transactions contemplated hereby and thereby. The Loan Documents to which the Borrower or any other Loan Party is a party have been duly executed and delivered by the duly authorized officers of such Person and each is a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein or therein and as may be limited by equitable principles generally.

(d) Compliance of Loan Documents with Laws. The execution, delivery and performance of this Agreement and the other Loan Documents to which any Loan Party is a party in accordance with their respective terms and the borrowings hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any Governmental Approval or violate any Applicable Law (including all Environmental Laws) relating to any Loan Party; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Borrower, any other Loan Party, or any indenture, agreement or other instrument to which any Loan Party is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by any Loan Party other than in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties, except in such instances, either individually or in the aggregate, that could not reasonably be expected to have a Material Adverse Effect.

(e) Compliance with Law; Governmental Approvals. To the best of the knowledge of the Borrower after due inquiry, each Loan Party and each other Subsidiary is in compliance with each Governmental Approval and all other Applicable Laws (including, without limitation, Anti-Corruption Laws and Sanctions) relating to it except for non-compliances which, and Governmental Approvals the failure to possess which, could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) Title to Properties; Liens. Schedule 7.1(f) is, as of the Agreement Date, a complete and correct listing of all real estate assets owned directly by the Borrower and each other Loan Party, and for each Collateral Property listed, the current occupancy status of such Property and whether such Property is a Collateral Property or other real estate asset. Except as indicated on Schedule 7.1(f) or other adjustments which are not material in amount, the Borrower, each other Loan Party owns or leases the assets reflected in the most recent consolidated balance sheet of the

Company as of the date thereof or acquired or leased since that date (except property sold or otherwise disposed of in the ordinary course since such date). Schedule 4.1(a) is, as of the Agreement Date, a complete and correct listing of all Collateral Properties. None of the Collateral is subject to any Lien other than Permitted Liens. No Collateral Property is subject to any Lien other than Permitted Liens. Each Collateral Property satisfies all requirements under the Loan Documents for being an Eligible Property; provided that, for the avoidance of doubt, any Collateral Property failing to satisfy all requirements for being an Eligible Property shall not cause such Collateral Property to cease being Collateral or from being included in the calculation of MCASH NOI.

(g) [Reserved].

(h) Material Contracts. Schedule 7.1(h) is, as of the Agreement Date, a true, correct and complete listing of all Material Contracts (other than Tenant Leases). Each of the Loan Parties that are parties to any Material Contract has performed and is in compliance with all of the terms of such Material Contract, and no default or event of default, or event or condition which with the giving of notice, the lapse of time, or both, would constitute such a default or event of default, exists with respect to any such Material Contract, except to the extent that non-compliance, default or event of default could not reasonably be expected to have a Material Adverse Effect.

(i) Litigation. Except as set forth on Schedule 7.1(i) (the “**Disclosed Litigation**”), there are no actions, suits or proceedings pending (nor, to the knowledge of any Loan Party, are there any actions, suits or proceedings threatened in writing) against or in any other way relating adversely to or affecting any Loan Party, any other Subsidiary or any of their respective property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which, (i) if adversely determined, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) in any manner challenges the validity or enforceability of any Loan Documents. There are no strikes, slow downs, work stoppages or walkouts or other labor disputes in progress or threatened relating to, any Loan Party or any other Subsidiary that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(j) Taxes. All tax returns of the Borrower and each other Loan Party required by Applicable Law to be filed have been duly filed (other than any return the filing date of which has been extended in accordance with Applicable Law), and all taxes, assessments and other governmental charges or levies upon, the Borrower and each other Loan Party and each of their respective properties, income, profits and assets which are due and payable have been paid, except (i) for any such taxes, assessments or other governmental charges or levies that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established on the books of such Person in accordance with GAAP, or (ii) to the extent any such non-payment or non-filing could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on any Collateral Property.

(k) Financial Statements. The Borrower has furnished to the Administrative Agent copies of, with respect to the Collateral Properties, (i) the unaudited consolidated balance sheet of each Collateral Property for the fiscal year ended December 31, 2020 and the related unaudited statements of operations, equity and cash flows for such Collateral Properties, and (ii)

the unaudited consolidated balance sheet with respect to each Collateral Property for the fiscal quarters ended March 31, 2021 and June 30, 2021 as at the end of each such period. Such financial statements (including in each case related schedules and notes) are complete and correct in all material respects and present fairly, in accordance with GAAP consistently applied throughout the periods involved.

(l) [Reserved].

(m) ERISA.

(i) Each Benefit Arrangement which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Benefit Arrangement is so qualified or such Benefit Arrangement is entitled to rely on an Internal Revenue Service advisory or opinion letter with respect to an approved master and prototype or volume submitter plan, or a timely application for such a determination or opinion letter is currently being processed by the Internal Revenue Service with respect thereto, and nothing has occurred subsequent to the issuance of such determination letter which would cause such Benefit Arrangement to lose its qualified status.

(ii) With respect to any Benefit Arrangement that is a retiree welfare benefit arrangement, all amounts have been accrued on the applicable ERISA Group's financial statements in accordance with FASB ASC 715. The "benefit obligation" of all Plans does not exceed the "fair market value of plan assets" for such Plans by more than \$10,000,000 all as determined by and with such terms defined in accordance with FASB ASC 715.

(iii) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no ERISA Event has occurred or is expected to occur; (ii) there are no pending, or to the best knowledge of the Borrower, threatened, claims, actions or lawsuits or other action by any Governmental Authority, plan participant or beneficiary with respect to a Benefit Arrangement; (iii) there are no violations of the fiduciary responsibility rules with respect to any Benefit Arrangement; (iv) no member of the ERISA Group has engaged in a non-exempt "prohibited transaction," as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code, in connection with any Plan, that would subject any member of the ERISA Group to a tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Internal Revenue Code; and (v) no assessment or tax has arisen under Section 4980H of the Internal Revenue Code.

(iv) As of the Effective Date, the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans.

(n) Absence of Default. None of the Loan Parties or the other Subsidiaries is in default under its certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents, and no event has occurred, which has not

been remedied, cured or waived: (i) which constitutes a Default or an Event of Default; or (ii) which constitutes, or which with the passage of time, the giving of notice, or both, would constitute, a default or event of default by, any Loan Party or any other Subsidiary under any agreement (other than this Agreement) or judgment, decree or order to which any such Person is a party or by which any such Person or any of its respective properties may be bound where such default or event of default could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Environmental Laws. The Borrower and each Loan Party has conducted reviews of the effect of Environmental Laws on the Collateral Properties in the course of which the Borrower or such other Loan Party has identified and evaluated associated actual and potential liabilities and costs (including, without limitation, determining whether any capital or operating expenditures are required for clean-up or closure of properties presently or previously owned, determining whether any capital or operating expenditures are required to achieve or maintain compliance in all material respects with Environmental Laws or required as a condition of any Governmental Approval, any contract, or any related constraints on operating activities, determining whether any material or unbudgeted costs or liabilities exist in connection with on-site or off-site treatment, storage, handling and disposal of wastes or Hazardous Materials, and determining whether any actual or potential liabilities to third parties, including employees, and any related costs and expenses under Environmental Laws exist). To the knowledge of the Borrower after due inquiry, each of the Borrower, each other Loan Party and each other Subsidiary: (i) is in compliance with all Environmental Laws applicable to its business, operations and the Collateral Properties, (ii) has obtained all Governmental Approvals which are required under Environmental Laws, and each such Governmental Approval is in full force and effect, and (iii) is in compliance with all terms and conditions of such Governmental Approvals, where with respect to each of the immediately preceding clauses (i) through (iii) the failure to obtain or to comply with could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except for any of the following matters that could not reasonably be expected to have a Material Adverse Effect, no Loan Party has any knowledge of, nor has it received notice of, any past, present, or pending releases, events, conditions, circumstances, activities, practices, incidents, facts, occurrences, actions, or plans that, with respect to any Loan Party or any other Subsidiary, their respective businesses, operations or Properties, may: (x) cause or contribute to an actual or alleged violation of or noncompliance with Environmental Laws, (y) cause or contribute to any other potential common-law or legal claim or other liability, or (z) cause any of the Collateral Properties to become subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law or require the filing or recording of any notice, approval or disclosure document under any Environmental Law which has not been filed or recorded and, with respect to the immediately preceding clauses (x) through (z) is based on or related to the on-site or off-site manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, removal, clean up or handling, or the emission, discharge, release or threatened release of any Hazardous Material, or any other requirement under Environmental Law. To the knowledge of the Borrower after due inquiry, there is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, or demand letter, mandate, order, lien, request, investigation, or proceeding pending or, threatened in writing, against any Loan Party or any other Subsidiary relating in any way to Environmental Laws with respect to the Properties which, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. None of the Collateral Properties is listed on or proposed for listing on the National Priority List

promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing regulations, or any state or local priority list promulgated pursuant to any analogous state or local law, which could reasonably be expected to require investigation or remediation by the Borrower. To the Borrower's knowledge, no Hazardous Materials generated at or transported from the Collateral Properties are or have been transported to, or disposed of at, any location that is listed or proposed for listing on the National Priority List or any analogous state or local priority list, or any other location that is or has been the subject of a clean-up, removal or remedial action pursuant to any Environmental Law, except to the extent that such generation, transportation or disposal could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

(p) Investment Company. No Loan Party, or any other Subsidiary is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, or (ii) subject to any other Applicable Law which purports to regulate or restrict its ability to borrow money or obtain other extensions of credit or to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

(q) Margin Stock. No Loan Party nor any other Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System.

(r) Affiliate Transactions. Except as permitted by Section 10.9 or as otherwise set forth on Schedule 7.1(r), no Loan Party is a party to or bound by any agreement or arrangement (whether oral or written) with any Affiliate (other than a Third Party Affiliate).

(s) Intellectual Property. Each of the Loan Parties and each other Subsidiary owns or has the right to use, under valid license agreements or otherwise, all patents, licenses, trademarks, trademark rights, service marks, service mark rights, trade names, trade name rights, trade secrets and copyrights (collectively, "**Intellectual Property**") necessary to the conduct of its businesses, without known conflict with any patent, license, franchise, trademark, trademark right, service mark, service mark right, trade secret, trade name, copyright, or other proprietary right of any other Person, except where the failure to have such rights would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such Intellectual Property is fully protected and/or duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filing or issuances, except where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the Borrower's knowledge, no material claim has been asserted by any Person against any Loan Party or any other Subsidiary with respect to the use of any such Intellectual Property by any Loan Party or any other Subsidiary, or challenging or questioning the validity or effectiveness of any such Intellectual Property, except claims that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the Borrower's knowledge, the use of such Intellectual Property by the Borrower, the other Loan Parties and the other Subsidiaries does not infringe on the rights of any Person, subject to such claims and infringements as do not, in the aggregate, give rise to any liabilities on the part of the Borrower, any other Loan Party or any other Subsidiary that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(t) Business. As of the Effective Date, the Loan Parties are primarily engaged in the business of owning and operating regional malls, strip shopping centers, outlet malls, office buildings, self-storage facilities, multi-family properties, hotels and mixed-use commercial properties.

(u) Broker's Fees. No broker's or finder's fee, commission or similar compensation will be payable with respect to the transactions contemplated hereby. No other similar fees or commissions will be payable by any Loan Party for any other services rendered to the Parent, the Borrower, any other Loan Party or any other Subsidiary ancillary to the transactions contemplated hereby.

(v) Accuracy and Completeness of Information.

(i) To the knowledge of the Borrower, the Borrower and its Subsidiaries have disclosed to the Administrative Agent and the Lenders all material agreements, instruments and corporate or other restrictions to which the Parent, the Company, the Borrower, or any Subsidiary is subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No financial statement, material report, material certificate or other material written information furnished by or on behalf of the Borrower, or any Subsidiary to the Administrative Agent or any Lender in connection with the transactions contemplated by the Loan Documents and the negotiation of the Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished), taken together as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being recognized by the Lenders that projections are not to be viewed as facts and that the actual results during the period or periods covered by such projections may vary from such projections).

(ii) As of the Agreement Date, the information included in each Beneficial Ownership Certification is true and correct in all respects.

(w) Not Plan Assets; No Prohibited Transactions. For purposes of ERISA and the Internal Revenue Code, none of the assets of any Loan Party or any other Subsidiary constitutes "plan assets", within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder. Assuming that no Lender funds any amount payable by it hereunder with "plan assets," as that term is defined in 29 C.F.R. 2510.3-101, the execution, delivery and performance of this Agreement and the other Loan Documents by the Loan Parties, and the borrowing, other credit extensions and repayment of amounts hereunder, do not and will not constitute non-exempt "prohibited transactions" under ERISA or the Internal Revenue Code.

(x) Anti-Corruption Laws and Sanctions. None of (i) the Borrower, the Parent, the Company or any Subsidiary, or, to the knowledge of the Borrower, the Parent, the Company

or such Subsidiary, any of their respective directors, officers, employees or Affiliates or (ii) to the knowledge of the Borrower, the Parent or the Company, any agent of the Borrower, the Company, the Parent or any Subsidiary that will act in any capacity in connection with or benefit from this Agreement, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons or (D) has violated any Anti-Money Laundering Law in any material respect. Each of the Borrower and its Subsidiaries, and to the knowledge of the Borrower, each director, officer, employee, agent and Affiliate of the Parent, the Company, the Borrower and each such Subsidiary, is in compliance with the Anti-Corruption Laws in all material respects. Each of the Borrower, the Parent and the Company has implemented and maintain in effect policies and procedures designed to ensure compliance in all material respects with the Anti-Corruption Laws and applicable Sanctions by the Borrower, the Company and the Parent, the Subsidiaries, their respective directors, officers, employees, Affiliates and agents and representatives of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from this Agreement.

(y) REIT Status. As of the Effective Date, the Company qualifies as, and has elected to be treated as, a REIT and is in compliance with all requirements and conditions imposed under the Internal Revenue Code to allow the Parent to maintain its status as a REIT.

(z) Legal Restrictions on Ability to Borrow. No Loan Party is subject to any Applicable Law which purports to regulate or restrict its ability to borrow money or obtain other extensions of credit or to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

(aa) Security Interests. Each of the Security Documents creates, as security for the Guaranteed Obligations, a valid and enforceable Lien on all of the Collateral, subject to the Administrative Agent taking the required perfection steps, the lien will be perfected and superior to and prior to the rights of all third Persons and subject to no other Liens (except for Permitted Liens), in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties.

(bb) Operating Statements. Each of the operating summaries pertaining to each of the Collateral Properties delivered by the Borrower to the Administrative Agent pursuant to Section 9.3 fairly presents the MCASH NOI of each such Property for the period then ended.

(cc) Collateral Properties.

(i) Eligibility. Each Collateral Property is an Eligible Property; provided that, for the avoidance of doubt, any Collateral Property failing to satisfy all requirements for being an Eligible Property shall not cause such Collateral Property to cease being Collateral or from being included in the calculation of MCASH NOI.

(ii) Americans with Disabilities Act Compliance. To each Loan Party's knowledge, the Collateral Properties comply in all material respects with the requirements and regulations of the Americans with Disabilities Act, of July 26, 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101, et seq.

(iii) Property Agreements. The Borrower has delivered to the Administrative Agent true, correct and complete copies of each Property Management Agreement. To each Loan Party's knowledge, each Property Management Agreement is in full force and effect, has not been amended or modified, and there are no defaults or events of default thereunder. Except for each Property Management Agreement, no agreements exist which are binding on any of the Loan Parties relating to the management of the Collateral Properties.

(iv) Certificate of Occupancy; Licenses. To each Loan Party's knowledge, all material certificates, permits, licenses and approvals, including certificates of completion and occupancy permits, required for the legal use, occupancy and operation of each Collateral Property (excluding, however, certificates of occupancy for tenant spaces and improvements) have been obtained and are in full force and effect. The use being made of each Collateral Property is in conformity in all material respects with all certificates, permits, licenses and approvals issued for and currently applicable to each Collateral Property.

(v) Physical Condition. To each Loan Party's knowledge: (a) except as otherwise set forth in the estoppel certificates from the tenants at the Collateral Properties or the property condition report delivered to the Administrative Agent on or before the Effective Date, with respect to the Collateral Properties, each Collateral Property (including all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, as applicable) is in good condition, order and repair in all material respects subject to ordinary wear and tear; and (b) there exist no structural or other material defects in or damage to any Collateral Property, whether latent or otherwise, that would adversely affect the operation of such Collateral Property in any material respect. No Loan Party has received: (i) any written notice from any insurance company or bonding company of any defects or inadequacies in any Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon in any material respect; or (ii) any written notice of any termination or threatened (in writing) termination of any policy of insurance or bond.

(vi) Boundaries. Except as disclosed in the Title Policies or on the surveys delivered by the Borrower to the Administrative Agent on or prior to the Effective Date, all of the improvements at each Collateral Property lie wholly within the boundaries and building restriction lines of such Collateral Property, and no improvements on adjoining properties encroach upon any Collateral Property, and no improvements encroach upon or violate any easements or other encumbrances upon any Collateral Property, except those which are insured against by title insurance or de minimis matters that could not reasonably be expected to adversely affect the operation of such Collateral Property in any material respect.

(vii) Flood Zone. Except as set forth on Schedule 7.1.(cc)(vii), no portion of any Collateral Property is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area.

(viii) Filing and Recording Taxes. To the Borrower's knowledge, all transfer taxes, deed stamps, intangible taxes, personal property taxes or other amounts in the nature of transfer or debt taxes required to be paid under applicable law in connection with the transfer of or debt on the Collateral Properties, if any, have been paid. Any material mortgage or deed of trust recording, stamp, intangible, personal property or other similar taxes required to be paid under applicable law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Documents, have been paid or are being paid simultaneously herewith. Except as disclosed in the Title Policies, to each Loan Party's knowledge, all material taxes and governmental assessments due and owing in respect of the Collateral Properties have been paid.

(ix) Tenant Leases. Except as disclosed in the rent roll for the Collateral Properties delivered to and approved by the Administrative Agent on or prior to the Effective Date (the "**Rent Roll**"), and on the estoppel certificates from the tenants at the Collateral Properties delivered to the Administrative Agent on the Effective Date, with respect to the Collateral Properties: (A) the Loan Party owning the fee interest in the Collateral Property relating to such Rent Roll (the "Applicable Loan Party") is the sole owner of the entire lessor's interest in the Tenant Leases; (B) to each Loan Party's knowledge, the Tenant Leases are valid and enforceable against the Applicable Loan Party and the tenants set forth therein and are in full force and effect; (C) except as permitted pursuant to Section 10.9, all of the Tenant Leases are arms-length agreements with bona fide, independent third parties; (D) to each Loan Party's knowledge, no party under any Tenant Lease is in default beyond any applicable notice and/or grace period thereunder; (E) except as set forth on any A/R report delivered with the Rent Roll, all rents due have been paid in full and no tenant is in arrears in its payment of rent (other than payment of work orders, direct utility recovery and CAM reconciliation not more than ninety (90) days past due); (F) neither the Borrower nor the Applicable Loan Party nor any of their Affiliates has assigned or otherwise pledged or hypothecated the rents reserved in the Tenant Leases; (G) none of the rents has been collected for more than one (1) month in advance (except security deposits, percentage rent, if any, and other amounts collected and subject to later reconciliation pursuant to the terms of the applicable Tenant Leases, which shall not be deemed rent collected in advance); (H) the premises demised under the Tenant Leases have been completed and the tenants have accepted the same and have taken possession of the same on a rent-paying basis with no rent concessions to any tenants; (I) to each Loan Party's knowledge, there exist no offsets or defenses to the payment of any portion of the rents and the Applicable Loan Party has no monetary obligation to any tenant under any Tenant Lease which has not been disclosed in writing to the Administrative Agent; (J) neither the Borrower nor the Applicable Loan Party has received any written notice from any tenant challenging the validity or enforceability of any Tenant Lease; (K) to each Loan Party's knowledge, there are no agreements with the tenants other than expressly set forth in each Tenant Lease; (L) no Tenant Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (M) to each Loan Party's knowledge, no Person has any possessory interest in, or right to occupy, such Collateral Property except under and pursuant to a Tenant Lease; (N) to each Loan Party's knowledge, no event has occurred that, but for the giving of notice and/or passage of time, would give any tenant any right to terminate any Tenant Lease at such Collateral Property; (O) all material

security deposits relating to the Tenant Leases reflected on the Rent Roll have been collected by the Applicable Loan Party; (P) no material brokerage commissions or finder's fees are more than fifteen (15) days past due regarding any Tenant Lease demising space in excess of 50,000 rentable square feet; (Q) to each Loan Party's knowledge, each tenant is in actual, physical occupancy of the premises demised under its Tenant Lease; and (R) except as disclosed to Administrative Agent prior to the Effective Date, to the knowledge of the Borrower, no Tenant is a debtor in any state or federal bankruptcy, insolvency or similar proceeding. Notwithstanding the foregoing, when the representations in this section are remade from time to time in accordance with this Agreement, such representations shall be made with respect to the Rent Rolls of the applicable Collateral Properties delivered to the Administrative Agent from time to time.

(x) Property Information. Except as set forth on the Title Policy or surveys delivered to the Administrative Agent on or prior to the Effective Date, or in the zoning reports delivered to the Administrative Agent on or prior to the Effective Date, to the Borrower's knowledge, (A) the Collateral Properties include sufficient on-site parking to comply with Applicable Law; (B) the Collateral Properties currently abut completed and dedicated public thoroughfares; and (C) no Loan Party has any knowledge, or reason to believe, that any archaeological ruins, discoveries or specimens, or cemeteries exist on any Collateral Property.

(xi) Brokers. (i) With respect to rentable spaces within the Collateral Properties in excess of 50,000 rentable square feet, no agreements exist which are binding on any of the Loan Parties relating to the future leasing of such rentable spaces within the Collateral Properties by brokers or other similar agents which are not terminable on more than thirty (30) days' notice; and (ii) with respect to rentable spaces within the Collateral Properties that are equal to or less than 50,000 rentable square feet, to the knowledge of the Loan Parties, no agreements exist which are binding on any of the Loan Parties relating to the future leasing of such rentable spaces within the Collateral Properties by brokers or other similar agents which are not terminable on more than thirty (30) days' notice.

(xii) Parking. No agreements exist which are binding on any of the Loan Parties relating to the rights of tenants at the Collateral Properties to park at locations other than at the Collateral Properties.

(dd) Flood Hazard Insurance. With respect to each Collateral Property, the Administrative Agent has received (a) such flood hazard certifications, notices and confirmations thereof, and effective flood hazard insurance policies as are described in Section 6.1(a) with respect to Collateral Properties on the Effective Date, (b) all flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full, and (c) except as the Borrower has previously given written notice thereof to the Administrative Agent, there has been no redesignation of any Property into or out of a special flood hazard area.

Section 7.2. **Survival of Representations and Warranties, Etc.**

All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party, to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any of the other Loan Documents (including, but not limited to, any such statement made in or in connection with any amendment thereto or any statement contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party prior to the Effective Date and delivered to the Administrative Agent or any Lender in connection with the underwriting or closing the transactions contemplated hereby) shall constitute representations and warranties made by the Borrower under this Agreement. All representations and warranties made under this Agreement and the other Loan Documents shall be deemed to be made at and as of the Effective Date. All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans, but shall terminate upon the termination of this Agreement in accordance with, but subject to, the provisions of Section 13.11.

Article VIII. Affirmative Covenants

For so long as this Agreement is in effect, unless the Requisite Lenders (or, if required pursuant to Section 13.7, all of the Lenders) shall otherwise consent in the manner provided for in Section 13.7 the Borrower and, unless and until the Parent Guaranty Termination Date or the REIT Guaranty Termination Date, as applicable, has occurred, the Parent and the Company (but solely to the extent expressly set forth in this Article VIII), shall comply with the following covenants:

Section 8.1. Preservation of Existence and Similar Matters.

Except as otherwise permitted under Section 10.4, the Borrower, the Parent and the Company shall, and shall cause each Subsidiary of the Borrower to, (a) preserve and maintain its respective existence in the jurisdiction of its incorporation or formation, (b) preserve and maintain its respective rights, franchises, licenses and privileges in the jurisdiction of its incorporation or formation and (c) qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization except in the case of clauses (a) (solely with respect to Subsidiaries that are not Loan Parties), (b) and (c), to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 8.2. Compliance with Applicable Law.

The Parent, the Company and the Borrower shall comply, and shall cause each Subsidiary of the Borrower to comply, and the Borrower shall use, and shall cause each other Loan Party and each other Subsidiary of the Borrower to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties to comply, with all Applicable Law, including the obtaining of all Governmental Approvals, the failure with which to comply could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Borrower, the Parent and the Company shall maintain in effect and enforce policies and procedures designed to ensure compliance with the Anti-Corruption Laws and applicable Sanctions in all material respects by the Parent, the Company, the Borrower, the Borrower's Subsidiaries, their

respective directors, officers, employees, Affiliates and agents and representatives of the Parent, the Company, the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from this Agreement.

Section 8.3. **Maintenance of Property.**

In addition to the requirements of any of the other Loan Documents, the Borrower shall, and shall cause each Subsidiary to, (a) protect and preserve all of its respective material properties, including, but not limited to, all Intellectual Property necessary to the conduct of its respective business, and maintain in good repair, working order and condition all tangible properties, ordinary wear and tear and insured casualty losses excepted, and (b) from time to time, make or cause to be made all necessary repairs and replacements to such property, so that the business carried on in connection therewith may be properly conducted at all times, in all material respects.

Section 8.4. **Conduct of Business.**

The Borrower shall, and shall cause each Subsidiary to, carry on its respective businesses as described in Section 7.1(t).

Section 8.5. **Insurance.**

In addition to the requirements of any of the other Loan Documents, the Borrower shall, and shall cause each Subsidiary to, maintain insurance (on a replacement cost basis) with financially sound and reputable insurance companies against such risks and in such amounts as are customarily maintained by Persons engaged in similar businesses or as may be required by Applicable Law; provided that notwithstanding the foregoing, the Borrower shall use commercially reasonable efforts to cause the Environmental Insurance Policy to be maintained and prior to expiration shall cause the renewal or procurement of a similar policy thereof in amounts and with scope of coverage not less than the amounts and scope of coverage in effect on the Agreement Date. The Borrower shall from time to time deliver to the Administrative Agent upon reasonable request a detailed list, together with copies of certificates evidencing all policies of the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby and/or insurance certificates, in form reasonably acceptable to the Administrative Agent, providing that the insurance coverage required under this Section 8.5 (including, without limitation, both property and liability insurance) is in full force and effect and stating that coverage shall not be cancelable or materially changed without ten (10) days prior written notice to the Administrative Agent of any cancellation for nonpayment of premiums, and not less than thirty (30) days prior written notice to the Administrative Agent of any other cancellation or any modification (including a reduction in coverage), together with appropriate evidence that the Administrative Agent, for its benefit and for the benefit of the other Lender Parties, is named as mortgagee lender's loss payee on each property casualty insurance policy and additional insured on all other insurance policies that the Borrower or any Loan Party actually maintains with respect to any Collateral Property and improvements on such Property. Such insurance shall, in any event, include terrorism coverage and all of the following:

(a) Insurance against loss to such Properties on an “all risk” policy form, and such other risks as the Administrative Agent may reasonably require, in amounts equal to the full replacement cost of the Properties including fixtures and equipment, the Borrower’s interest in leasehold improvements, and the cost of debris removal, with, if required by the Administrative Agent, an agreed amount endorsement, and with deductibles of not more than \$100,000 (or such higher commercially reasonable deductible as the Administrative Agent shall determine in its sole discretion), except that any deductibles for any insurance covering damage (i) by windstorm or earthquake may be in amounts up to 5% of the value of the Property insured, (ii) by hail or water damage may be in the amount of \$400,000, or (iii) by flood may be in amounts up to \$100,000, except \$500,000 for Special Flood Hazard Areas (except that flood insurance policies under the National Flood Insurance Program cannot exceed \$50,000);

(b) Rental loss and/or business income interruption insurance in amounts sufficient to pay, during any period in which a Property may be damaged or destroyed, for a period of twenty-four (24) months; (i) at least 100% of all rents and (ii) all amounts (including, but not limited to, all taxes, assessments, utility charges and insurance premiums) required to be paid by tenants of the Property;

(c) During the making of any alterations or improvements to a Property, carry or cause to be carried builder’s completed value risk insurance against “all risks of physical loss” for the full replacement cost of the construction Properties;

(d) Fully paid flood hazard insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973 and The National Flood Insurance Reform Act of 1994, or as otherwise required by the Administrative Agent, if any such Property is now, or at any time while the Obligations or any portion thereof remains unpaid shall be, situated in any area which an appropriate Governmental Authority designates as a special flood hazard area, in amounts equal to the full replacement value of all above grade structures on such Property, or as such lesser amounts as may be determined by the Administrative Agent, but which such amounts shall not be less than the minimum required under the Flood Laws (and the Borrower shall (i) furnish to the Administrative Agent evidence of renewal (and payment of renewal premiums therefor) of all such policies prior to the expiration or lapse thereof, and (ii) furnish to the Administrative Agent prompt written notice of any redesignation of any such improved real property into or out of a special flood hazard area);

(e) Commercial general public liability insurance, with the location of the Properties designated thereon, against death, bodily injury and property damage arising on, about or in connection with the Properties, with the Borrower or the applicable Subsidiary listed as the named insured, with such limits as the Borrower or the applicable Subsidiary may reasonably require (but in no event less than \$1,000,000 per occurrence including any excess coverage); and

(f) Such other insurance, including, without limitation, earthquake coverage, relating to the Properties and the uses and operation thereof as the Administrative Agent may, from time to time, reasonably require.

All insurance (except for auto, earthquake or flood insurance (but only if the flood insurance is obtained under the National Flood Insurance Program and not with respect to private

flood insurance if obtained) shall be written by carriers with a claims paying ability of “A” or better by S&P (and the equivalent by any other rating agency) or having a rating of A or better in the current Best’s insurance reports.

In the event of any damage to a Collateral Property, in whole or in part, by fire or other casualty or any condemnation, in whole or in part, shall occur with respect to any Collateral Property (a “**Casualty/Condemnation Event**”), in accordance with Section 9.4(m) hereof, the Borrower shall give prompt notice of such damage or condemnation to the Administrative Agent. The Borrower shall, subject (to the extent the cost of the repair and restoration of such Collateral Property shall be greater than or equal to ten percent (10%) of the Appraised Value of such Collateral Property) to the prior consent of the Administrative Agent, promptly commence (but in all events no later than ninety (90) days after receipt of insurance proceeds or condemnation award, as applicable; provided, that commencement shall be subject to the receipt of the applicable approvals and permits required to commence such repair or restoration and which are being diligently pursued by the Borrower; provided, further, that in the event such commencement has not occurred prior to the date that is one hundred eighty (180) days following receipt of such insurance proceeds or condemnation award, such amounts shall be subject to the terms of Section 2.8(b)(iv)(y)) and/or diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Collateral Property was in immediately prior to such Casualty/Condemnation Event. Provided the extent of damage or condemnation is expected to be less than ten percent (10%) of the Appraised Value of such Property, and the Borrower delivers to the Administrative Agent a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the restoration of such Collateral Property, the Administrative Agent shall cause, and the Lenders hereby authorize the Administrative Agent to cause, all insurance proceeds payable as a result of such Casualty/Condemnation Event to be disbursed to the Borrower for the restoration of such Collateral Property. In the event the extent of damage or condemnation is expected to be equal to or more than ten percent (10%) of the Appraised Value of such Property, (i) the insurance proceeds payable as a result of such Casualty/Condemnation Event shall be deposited into one or more accounts controlled by the Administrative Agent and (ii) the Administrative Agent shall consult with the Borrower regarding the procedure for distribution, if any, of the insurance proceeds to be disbursed from such account(s) to the Borrower for the restoration of such Collateral Property, which disbursement shall be made in accordance with customary construction disbursement provisions as mutually agreed by the Borrower and the Administrative Agent.

Section 8.6. Payment of Taxes and Claims.

The Borrower shall, and the Borrower shall cause each Subsidiary to, pay and discharge when due (a) all taxes, assessments and governmental charges or levies (including without limitation, any and all stamp, excise, intangible, registration, recordation and similar taxes, fees or charges) imposed upon it or upon its income or profits or upon any properties belonging to it, and (b) all lawful claims of materialmen, mechanics, carriers, warehousemen and landlords for labor, materials, supplies and rentals which, if unpaid, might become a Lien on any properties of such Person; provided, however, that this Section shall not require the payment or discharge of any such tax, assessment, charge, levy or claim (x) which is being contested in good faith by appropriate proceedings and for which adequate reserves have been established on the books of such Person in accordance with GAAP, (y) which is bonded or otherwise insured against to the reasonable

satisfaction of the Administrative Agent, or (z) where the failure to so pay or discharge could not reasonably be expected to have a material adverse effect on any Collateral Property.

Section 8.7. Books and Records; Inspections.

The Parent, the Company and the Borrower shall, and the Borrower shall cause each Subsidiary to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. The Borrower shall, and the Borrower shall cause each Subsidiary to, permit representatives of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine and make abstracts from any of their respective books and records and to discuss their respective affairs, finances and accounts with their respective officers and, if an Event of Default shall then exist, the Administrative Agent may conduct such discussions with the Borrower's independent public accountants, all at such reasonable times during business hours and as often as may reasonably be requested and so long as no Event of Default exists, with reasonable prior notice; provided, however, unless an Event of Default exists (a) only the Administrative Agent may exercise its rights under this Section which shall be limited to two (2) inspections during any period of twelve (12) consecutive months, and (b) the Administrative Agent may not discuss the affairs, finances and accounts of the Parent, the Company or the Borrower with their employees pursuant to this Section. The Borrower shall be obligated to reimburse the Administrative Agent and the Lenders for their actual costs and expenses incurred in connection with the exercise of their rights under this Section only if such exercise occurs while a Default or Event of Default exists. The Borrower hereby authorizes and instructs its accountants to discuss the financial affairs of the Parent, the Company, Borrower, any other Loan Party or any other Subsidiary with the Administrative Agent if an Event of Default shall then exist.

Section 8.8. Use of Proceeds.

The Borrower shall not, and shall not permit any Subsidiary, or any of its or their respective directors, officers, employees and agents, to, use any proceeds of the Loans to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any such margin stock. The Borrower will not request any Loans, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of the Loans (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 8.9. **Environmental Matters.**

The Borrower shall, and shall cause each Subsidiary to, comply, and the Borrower shall use, and shall cause each Subsidiary to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties to comply, with all Environmental Laws with respect to the Collateral Properties except for failures to comply which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Borrower shall, and shall cause each Subsidiary to, promptly take all actions and pay or arrange to pay all costs necessary for it and for the Properties to comply (a) with respect to the Collateral Properties, in all respects, and (b) with respect to Properties that are not Collateral Properties, in all material respects, in each case, with all Environmental Laws and all Governmental Approvals, including actions to remove and dispose of all Hazardous Materials and to clean up the Properties as required under Environmental Laws, except for failures to comply which could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on any Collateral Property. The Borrower shall, and shall cause the Subsidiaries to, promptly take all actions necessary to prevent the imposition of any Liens on any of their respective properties arising out of or related to any Environmental Laws. Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, after prior written notice to the Administrative Agent, either the Borrower or any Guarantor, at its own expense, shall have the right to contest by appropriate legal proceedings, promptly initiated and conducted at all times in good faith with due diligence, without cost or expense to the Administrative Agent or any Lender, the validity or application of any Environmental Laws which do not subject the Administrative Agent or any Lender to any civil or criminal liability, provided that continually and at all times (i) no Event of Default shall occur under this Agreement or the other Loan Documents, (ii) neither any Property nor any part thereof or interest therein will be in danger of being sold, attached, liened, forfeited, terminated, canceled or lost, and (iii) the Borrower or such Subsidiary Guarantor, as the case may be, shall have furnished security to the Administrative Agent, satisfactory to the Administrative Agent, in its reasonable discretion, against any loss or injury by reason of such contest or delay.

Section 8.10. **Further Assurances.**

At the Borrower's cost and expense (provided such cost is reasonable and shall not have a Material Adverse Effect) and upon request of the Administrative Agent, the Parent, the Company and the Borrower shall, and shall cause each Subsidiary to, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further instruments, documents and certificates, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents.

Section 8.11. **Material Contracts.**

The Borrower shall, and shall cause each Subsidiary to, duly and punctually perform and comply with any and all material representations, warranties, covenants and agreements expressed as binding upon any such Person under any Material Contract. The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary of the Borrower to, do or knowingly permit to be done anything to impair materially the value of any of the Material Contracts.

Section 8.12. **Excess Cash Flow.**

(a) Subject to Section 8.12(b) and Section 8.12(c) below:

(i) Stub Period ECF. No later than five (5) Business Days following the ECF Calculation Date occurring March 1, 2022, for the Stub Excess Cash Flow Period, the Borrower shall deliver an ECF Calculation Certificate to the Administrative Agent, which shall set forth the amount of Stub Period Excess Cash Flow (if any) for the Stub Excess Cash Flow Period determined by reference to the applicable financial statements delivered pursuant to Section 9.2 and any Stub Period Excess Cash Flow for such period as follows:

(A) first, an amount equal to the actual ECF NOI (Additional Collateral Properties) may be distributed by the Borrower to the Parent for general corporate uses or further distribution;

(B) second, the next \$1,250,000 shall be applied by the Borrower to repay the Aggregate Outstanding Balance;

(C) third, the next \$833,333 shall be distributed by the Borrower to the Parent for general corporate uses or further distribution; and

(D) fourth, with respect to any remaining Stub Period Excess Cash Flow, an amount equal to fifty percent (50%) thereof shall be applied to repay the Aggregate Outstanding Balance and the other fifty percent (50%) may be distributed by the Borrower to the Parent for general corporate uses or further distribution.

(ii) ECF After the Stub Period. No later than five (5) Business Days following each ECF Calculation Date, commencing with the ECF Calculation Date occurring September 1, 2022 (for the Excess Cash Flow Period ending June 30, 2022), and on every ECF Calculation Date thereafter, the Borrower shall deliver an ECF Calculation Certificate to the Administrative Agent, which shall set forth the amount of Excess Cash Flow (if any) for the Excess Cash Flow Period applicable thereto, in each case determined using the financial statements delivered for the applicable period pursuant to Section 9.1 and Section 9.2 and apply any Excess Cash Flow for such period as follows:

(A) first, an amount not to exceed the ECF NOI (Additional Collateral Properties) may be distributed by the Borrower to the Parent for general corporate uses or further distribution;

(B) second, the next \$7,500,000 shall be applied by the Borrower to repay the Aggregate Outstanding Balance (a "**Principal Repayment**") less, in the case of such application of Excess Cash Flow for the Second Semi-Annual Period in any fiscal year, the aggregate amount of any Principal Repayments during the immediately preceding First Semi-Annual Period made pursuant to this clause (B);

(C) third, the next \$5,000,000 may be distributed by the Borrower to the Parent for general corporate uses or further distribution (a “**Distribution**”) less, in the case of such application of Excess Cash Flow for the Second Semi-Annual Period in any fiscal year, the aggregate amount of any Distributions during the immediately preceding First Semi-Annual Period made pursuant to this clause (C);

(D) fourth, with respect to any remaining Excess Cash Flow, an amount equal to fifty percent (50%) thereof shall be applied to repay the Aggregate Outstanding Balance and the other fifty percent (50%) may be distributed by the Borrower to the Parent for general corporate uses or further distribution;

(iii) Notwithstanding the foregoing subsections (i) and (ii), prior to any application as set forth above in subsection (i) or (ii), all revenue from the Collateral Properties shall be deposited in either Property-level operating accounts or accounts owned by the Borrower, each subject to a deposit account control agreement in favor of the Administrative Agent for the benefit of the Lenders.

(b) If a Default under Section 11.1(a), Section 11.1(e) or Section 11.1(f) then exists, or if an Event of Default, has occurred and is continuing, no distributions or application of ECF NOI, Excess Cash Flow, Stub Period Excess Cash Flow or other amounts set forth above shall be permitted, other than to repay the Aggregate Outstanding Balance; provided that if such Defaults or Events of Default are curable and have been cured, as determined by the Administrative Agent in its reasonable discretion, then applications of ECF NOI, Excess Cash Flow, Stub Period Excess Cash Flow or other amounts set forth above shall resume as prescribed in Section 8.12.

(c) Notwithstanding the foregoing, no distributions or application of Excess Cash Flow or Stub Period Excess Cash Flow shall be required or permitted if such distribution or application would cause the minimum Liquidity threshold contained in Section 10.1 to be breached.

Section 8.13. **Capital Expenditures; Capex Reserve Account.**

(a) In the event that, (i) for any First Semi-Annual Period the aggregate amount of actual cash Capital Expenditures with respect to the Collateral Properties is less than \$7,500,000, then promptly after the end of such First Semi-Annual Period, the Borrower (x) shall deposit the difference into a segregated reserve deposit account held by the Borrower and with respect to which Administrative Agent has a perfected security interest (the “**Capex Reserve Account**”) and (y) may, at its election, deposit an additional amount of up to \$7,500,000 in the Capex Reserve Account, and (ii) for any Second Semi-Annual Period the aggregate amount of Capital Expenditures with respect to the Collateral Properties actually made during the First Semi-Annual Period and the Second Semi-Annual Period, together with (but without duplication of) any amounts deposited in the Capex Reserve Account with respect to the immediately prior First Semi-Annual Period under clause (i) above, is less than \$15,000,000, then promptly after the end of such Second Semi-Annual Period, the Borrower shall deposit the difference into the Capex Reserve Account. For purposes of clarity, funds spent from (or maintained within) the Capex Reserve

Account and attributed to a prior year shall not be included when determining whether Borrower has satisfied the \$7,500,000 and \$15,000,000 thresholds.

(b) So long as no Event of Default then exists, the Borrower may withdraw and expend funds in the Capex Reserve Account to pay for Capital Expenditures at the Collateral Properties.

(c) If an Event of Default has occurred and is continuing (other than an Event of Default under Section 11.1(a), Section 11.1(e) or Section 11.1(f)), and provided that the Loan has not been accelerated in accordance with Section 11.2(a), the Borrower shall be permitted to continue to withdraw and expend funds from the Capex Reserve Account or otherwise solely for Capital Expenditures projects that have either been commenced or irrevocably committed to in writing prior to the date of such Event of Default.

Section 8.14. **Subsidiary Grantors; Subsidiary Guarantors.**

(a) With respect to any Subsidiary that owns any Collateral Property (and each Subsidiary of the Borrower that owns, directly or indirectly, the Equity Interests of such Subsidiary), as of the date such Property shall be added as a Collateral Property pursuant to Section 4.1 after the Effective Date, within five (5) Business Days (or such longer period as the Administrative Agent may reasonably determine) after the effectiveness of such addition, guarantee or obligation, in each case, the Borrower shall, or shall cause such Subsidiary, as applicable, to, deliver to the Administrative Agent each of the following in form and substance satisfactory to the Administrative Agent: (x) (A) with respect to any such Subsidiary, (i) an Accession Agreement executed by such Subsidiary and (ii) with respect to any such Subsidiary that directly owns the Equity Interests of any owner of the Collateral Properties, a Collateral Joinder Agreement and (y) the items that would have been delivered under Section 6.1(a) as if such Subsidiary had been a Subsidiary Guarantor and/or a Subsidiary Grantor on the Effective Date.

(b) The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release, a Subsidiary Guarantor from the Guaranty so long as: (i) such Subsidiary Guarantor owns no Collateral Property, nor any direct or indirect Equity Interest in any Subsidiary that owns a Collateral Property; (ii) such Subsidiary Guarantor is not otherwise required to be a party to the Guaranty under the immediately preceding subsection (a); (iii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including, without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1; and (v) the Administrative Agent shall have received such written request at least ten (10) Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request.

(c) The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release, a Subsidiary Grantor from

the Collateral Agreement so long as: (i) such Subsidiary Grantor owns no Collateral Property, nor any direct Equity Interest in any Subsidiary that owns a Collateral Property; (ii) such Subsidiary Grantor is not otherwise required to be a party to the Collateral Agreement under the immediately preceding subsection (a); (iii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including, without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1; and (iv) the Administrative Agent shall have received such written request at least ten (10) Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request.

Section 8.15. Compliance with Anti-Corruption Laws and Sanctions.

The Borrower shall maintain in effect and enforce policies and procedures (including policies and procedures implemented and maintained by the managers of Properties) reasonably designed to ensure compliance by the Borrower, its Subsidiaries and its directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 8.16. Liens.

If a claim of Lien is recorded which affects any Collateral Property (other than a Permitted Lien), the Borrower shall, within thirty (30) days after the Administrative Agent's demand, or any Loan Party obtains knowledge thereof, whichever occurs first: (a) pay and discharge the claim of Lien; (b) effect the release thereof by recording or depositing with a court of competent jurisdiction a surety bond in sufficient form and amount; (c) contest such Lien as provided below; or (d) provide the Administrative Agent with other assurances (by bonding in accordance with statutory bonding requirements or receipt of affirmative title insurance coverage insuring over such Lien) which the Administrative Agent deems, in its reasonable discretion, to be satisfactory for the payment of such claim of Lien and for the full and continuous protection of the Administrative Agent from the effect of such Lien. The Borrower may contest in good faith any Lien, claim, demand, levy or assessment by any Person if: (i) the Borrower pursues the contest diligently, in a manner which does not materially impair the rights of the Administrative Agent under any of the Loan Documents; and (ii) the Borrower deposits with the Administrative Agent any funds or other forms of assurance which the Administrative Agent in good faith determines from time to time appropriate to protect the Administrative Agent from the consequences of the contest being unsuccessful.

Section 8.17. Tenant Leases.

Unless consented to in writing by the Administrative Agent or otherwise permitted under any other provision of the Loan Documents (including, without limitation, Section 10.12), the Borrower and/or the Applicable Loan Party shall not, with respect to any Collateral Property:

(a) grant any tenant under any Tenant Lease any option, right of first refusal or other right to purchase all or any portion of such Collateral Property under any circumstances;

- (b) grant any tenant under any Tenant Lease any right to prepay rent more than one month in advance (other than the initial rental payment payable upon execution of a Tenant Lease and other than security deposits);
- (c) execute any assignment of landlord's interest in any Tenant Lease;
- (d) collect rent or other sums due under any Tenant Lease in advance, other than to collect rent one month in advance of the time when it becomes due;
- (e) permit any sublease or assignment of a Tenant Lease demising space in excess of 50,000 rentable square feet to which the landlord's consent is expressly required pursuant to the terms of such Tenant Lease;
- (f) terminate, modify, restate or amend any Tenant Lease in any material manner if such Tenant Lease demises space in excess of 50,000 rentable square feet (including, without limitation, any changes to the economic provisions thereof);
- (g) release or discharge the tenant or any guarantor under any Tenant Lease demising space in excess of 50,000 rentable square feet from any material obligation thereunder; or
- (h) commit, permit or suffer to exist (to the extent it has knowledge of the existence thereof) any illegal activities or activities relating to any Schedule 1 federally controlled substances at such Collateral Property (including, without limitation, any growing, distributing and/or dispensing of medical or recreational marijuana).

Section 8.18. Ratings.

On an annual basis, after filing or delivery of financials pursuant to Section 9.2(a), the Borrower shall use commercially reasonable efforts to obtain Debt Ratings from each of S&P and Moody's, provided that Borrower shall use commercially reasonable effort to obtain the first such rating on or prior to May 31, 2022 (which efforts shall commence following the filing by the Company with the SEC of the Form 10-K for 2021), and further provided, however, that a failure to obtain any such Debt Ratings shall not constitute a Default or Event of Default so long as the Borrower used its commercially reasonable efforts to do so.

Section 8.19. Post-Closing Covenants.

The Borrower shall satisfy the requirements set forth in Schedule 8.19 on or before the date specified for such requirement or such later date to be determined by the Administrative Agent in its sole discretion. To the extent any Loan Document requires delivery of any document or completion of an action prior to the date specified in this Section 8.19, such delivery may be made or such action may be taken at any time prior to that specified in this Section 8.19. To the extent any representation and warranty would not be true or any provision of any covenant would be breached because the actions required by this Section 8.19 are not taken on the Effective Date, the respective representation and warranty shall be required to be true and correct with respect to such action, or the respective covenant complied with, only at the time the respective action is taken (or was required to be taken) in accordance with this Section 8.19.

Article IX. Information

For so long as this Agreement is in effect, unless the Requisite Lenders (or, if required pursuant to Section 13.7, all of the Lenders) shall otherwise consent in the manner set forth in Section 13.7, the Borrower shall furnish to the Administrative Agent at the Principal Office for distribution to each of the Lenders:

Section 9.1. Quarterly Financial Statements.

(a) With respect to each of the Parent and the Company, (i) to the extent that it is an SEC-filing entity, as soon as available and in any event within five (5) Business Days after the same is required to be filed with the SEC including any extension granted thereby, the Borrower shall deliver a copy of each report on Form 10-Q (or its equivalent) which the Parent and the Company, shall file with the SEC; provided, however, that in any event the Parent and the Company shall provide, no later than forty-five (45) days after the end of each of the first, second and third fiscal quarters of the Parent and the Company, preliminary quarterly financial information for the Parent and the Company ("Preliminary Financial Information"), which preliminary information shall be used for covenant testing hereunder until such final statements are filed with the SEC or (ii) to the extent that the Parent or the Company ceases to file such reports, is not required to file such reports or if any such report filed does not contain any of the following, the Borrower shall deliver as soon as available and in any event within fifty-five (55) days (provided that such period shall be extended by any extension granted to the Parent or the Company, as applicable, by the SEC under clause (i) above, so long as either the Parent or the Company is an SEC-filing entity, and so long as Preliminary Financial Statements are delivered within forty-five (45) days), in each case, after the close of each of the first, second and third fiscal quarters of the Parent or the Company, as applicable, the unaudited balance sheet of the Parent or the Company, as applicable, and its Subsidiaries on a consolidated basis as at the end of such period and the related unaudited statements of operations, stockholders' equity and cash flows of the Parent or the Company, as applicable, and its Subsidiaries on a consolidated basis for such period, setting forth in each case in comparative form (which comparison shall be consistent with the Form 10-Q for the Parent for the fiscal quarter ending June 30, 2021), all of which shall be certified by the chief executive officer, chief financial officer or any officer having a position of at least senior vice president of accounting of the general partner of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of the Parent or the Company, as applicable, and its Subsidiaries on a consolidated basis as at the date thereof and the results of operations for such period.

(b) With respect to the Collateral Properties, the Borrower shall deliver, together with delivery of the quarterly financials under clause (a) above, an unaudited consolidating balance sheet and income statement of the Borrower reflecting each Collateral Property as at the end of such period, all of which shall not be filed publicly and shall be certified by the chief executive officer, chief financial officer or any officer having a position of at least senior vice president of accounting of the Company, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of each such Collateral Property as at the date thereof (subject to normal year-end adjustments). Additionally, an unaudited consolidated balance sheet and income statement of the Borrower shall be publicly reported as part of the Parent's quarterly supplemental information posted to its website. Such

unaudited condensed consolidated balance sheet and income statement to be included in the Parent's quarterly supplemental information will be in a format consistent with that shown in Exhibit C to this agreement and shall include a line item showing aggregate MCASH NOI on a GAAP basis from the Collateral Properties for the reporting period in question.

(c) On a semi-annual basis, concurrently with its delivery of the ECF Calculation Certificate, Borrower will deliver to Administrative Agent (i) MCASH NOI reflecting each Collateral Property to reconcile to the information used in the ECF Calculation Certificate and (ii) an unaudited statement of cash flows for the Borrower which shall be publicly reported as part of the Parent's quarterly supplemental information posted to its website for such semi-annual period, all of which shall be certified by the chief executive officer, chief financial officer or any officer having a position of at least senior vice president of accounting of the Company, in his or her opinion, to present fairly, in accordance with GAAP or modified GAAP consistent with Section 9.1.(c)(i) above and in all material respects, the financial position of each such Collateral Property and the Borrower, as applicable, as at the date thereof (subject to normal year-end adjustments).

Section 9.2. Year-End Statements.

(a) With respect to the Parent and the Company:

(i) Solely to the extent that it is an SEC-filing entity, as soon as available and in any event within five (5) Business Days after the same is required to be filed with the SEC including any extension granted thereby, a copy of each report on Form 10-K (or its equivalent) which the Parent and the Company, as applicable, shall file with the SEC; provided, however, that in any event the Parent and the Company shall provide, no later than ninety (90) days after the end of fiscal year of the Parent and the Company, as applicable, preliminary annual financial information for the Parent and the Company, which preliminary information shall be used for covenant testing hereunder until such final statements are filed with the SEC or delivered under subsection (ii) or (iii) below, as applicable.

(ii) To the extent that the Parent or the Company ceases to file such reports with the SEC, is not required to file such reports or if any such report filed does not contain any of the following, the Borrower shall deliver as soon as available and in any event within one hundred and twenty (120) days after the end of each fiscal year of the Parent and the Company, as applicable, the audited consolidated balance sheet of the Parent and the Company, as applicable, as at the end of such fiscal year and the related audited consolidated statements of operations, stockholders' equity and statement of cash flows of the Parent and the Company, as applicable, for such fiscal year, setting forth in comparative form the figures as at the end of and for the previous fiscal year, provided that this clause (ii) shall not apply to the Parent from and after the first date that the Principal Liability Cap (as such term is defined in the Parent Guaranty) has been reduced to \$87,500,000 or less in accordance with the terms of the Parent Guaranty (the "Parent Guarantee Reduction Date"); and

(iii) From and after the Parent Guarantee Reduction Date, the Borrower shall deliver within thirty (30) days following the filing by the Company of the Form 10-K pursuant to clause (a)(i) above or to the extent that the Company ceases to file such reports, is not required to file such reports or if any such report filed does not contain any of the following, within one hundred and twenty (120) days, the unaudited balance sheet of the Parent and its Subsidiaries on a consolidated basis as at the end of such fiscal year and the related unaudited statements of operations, stockholders' equity and cash flows of each of the Parent and its Subsidiaries on a consolidated basis for such fiscal year, setting forth in comparative form the figures as at the end of and for the previous fiscal year;

all of which reports (x) referenced in (i) and (ii) preceding shall be certified by the chief executive officer, chief financial officer or any officer having a position of at least a senior vice president of accounting of the general partner of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of the Parent or the Company, as applicable, and its Subsidiaries as at the date thereof and the results of operations for such period and (y) referenced in (ii) preceding, accompanied by the report thereon of Deloitte & Touche LLP or any other independent certified public accountants of recognized national standing reasonably acceptable to the Requisite Lenders, whose report shall be prepared in accordance with generally accepted auditing standards and shall not be subject to (i) any "going concern" (other than due to the maturity of any Indebtedness within the twelve month period following the date such report is issued or due to any projected breach of any financial covenants contained within any Indebtedness) or like qualification or exception or (ii) any qualification or exception as to the scope of such audit.

(b) With respect to the Collateral Properties, the Borrower shall deliver, together with delivery of the applicable annual financial statements pursuant to clause (a) above, an unaudited consolidated balance sheet and income statement of the Borrower reflecting each Collateral Property as at the end of such fiscal year, all of which shall be certified by the chief executive officer, chief financial officer or any officer having a position of at least a senior vice president of accounting of the general partner of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of each such Collateral Property as at the date thereof. Additionally, an unaudited condensed consolidated balance sheet and income statement of the Borrower shall be publicly reported as part of the Parent's quarterly supplemental information posted to its website. Such unaudited condensed consolidated balance sheet and income statement will be in a format consistent with that shown in Exhibit C to this agreement.

Section 9.3. **Compliance Certificate.**

Together with the delivery of the financial statements that are furnished pursuant to the immediately preceding Section 9.1 and Section 9.2, commencing with the fiscal year ended December 31, 2021, (a) a certificate substantially in the form of Exhibit L (a "**Compliance Certificate**") executed on behalf of the Borrower by any officer of the general partner of the Parent having a position of at least a senior vice president of accounting (i) setting forth in reasonable detail as of the end of such quarterly accounting period or fiscal year, as the case may be, the calculations required to establish (x) to the extent applicable for such period, whether the Borrower

was in compliance with the covenants contained in Section 10.1 (and if such covenants are not yet being tested, providing the covenant calculation solely for informational purposes), and (y) the Debt Yield Ratio; and (ii) stating that to the best of such officer's knowledge, no Default or Event of Default exists, or, if such is not the case, specifying such Default or Event of Default and its nature, when it occurred and the steps being taken by the Borrower with respect to such event, condition or failure and (b) a schedule of the Collateral Properties detailing, on an individual and collective (roll-up) basis, all financial information maintained on the Collateral Properties, including, without limitation, trailing twelve (12) month MCASH NOI (including a footnote or schedule detailing the revenue of any tenants that are the subject of a bankruptcy or insolvency proceeding which is being included in such calculation of MCASH NOI), Occupancy Rate, a current Rent Roll, aggregate capital expenditures (including any deferred maintenance), redevelopment costs, tenant allowances and development investments for each Collateral Property made during such quarterly accounting period or fiscal year, as the case may be, year-to-date summary sales reports by Collateral Property and aged receivables reports.

Section 9.4. **Other Information.**

(a) Promptly upon receipt thereof, copies of all reports, if any, submitted to the Parent, the Company or the Company's Board of Directors by its independent public accountants including, without limitation, any management report;

(b) Within ten (10) Business Days of the filing thereof, and if the same are not available on-line free of charge from either the website of the SEC or the website of the Company, copies of all press releases, shareholder reports, registration statements (excluding the exhibits thereto (unless requested by the Administrative Agent) and any registration statements on Form S-8 or its equivalent), reports on Forms 10-K, 10-Q and 8-K (or their equivalents) and all other periodic reports which the Company, Parent, any Loan Party or any other Subsidiary shall file with the SEC or any national securities exchange; provided, however, to the extent that any items required to be delivered pursuant to Section 9.4 have been filed with the SEC or any national securities exchange within the applicable time requirements of this Agreement, such requirement shall be deemed satisfied;

(c) Promptly upon the mailing thereof to the shareholders of the Parent generally, copies of all financial statements, reports and proxy statements so mailed and promptly upon the issuance thereof copies of all press releases issued by the Parent or the Borrower;

(d) No later than ninety (90) days after the end of each fiscal year of the Company, the Parent or the Borrower, as applicable, ending prior to the latest Maturity Date, projected balance sheets, operating statements, profit and loss projections and cash flow budgets (including sources and uses of cash) of the Company, the Parent or the Borrower, as applicable, and its Subsidiaries on a consolidated basis for each quarter of the next succeeding fiscal year, all itemized in reasonable detail, including in the case of the cash flow budgets, excess operating cash flow, availability under this Agreement, unused availability under committed development loans, unfunded committed equity and any other committed sources of funds, as well as, cash obligations for acquisitions, unfunded development costs, capital expenditures, debt service, overhead, dividends, maturing Property loans and other anticipated uses of cash, including a leasing status report identifying current occupancy and lease maturities in the next twelve months. The foregoing

shall be accompanied by pro forma calculations, together with detailed assumptions, required to establish whether or not the Borrower and when appropriate its consolidated Subsidiaries, will be in compliance with the covenants contained in Section 10.1 and at the end of each fiscal quarter of the remainder of the fiscal year;

(e) No later than thirty (30) days following the end of each fiscal year of the Borrower ending prior to the latest Maturity Date, a MCASH NOI budget for each Collateral Property for the then current fiscal year of the Borrower;

(f) If any ERISA Event shall occur that individually, or together with any other ERISA Event that has occurred, could reasonably be expected to have a Material Adverse Effect, a certificate of the chief executive officer or chief financial officer of the general partner of the Parent setting forth details as to such occurrence and the action, if any, which the Company, the Parent or the Borrower, as applicable, or applicable member of the ERISA Group is required or proposes to take;

(g) To the extent any Senior Officer is aware of the same, prompt notice of any written notification received from, any inquiry by or the commencement of any proceeding or investigation by or before any Governmental Authority and any action or proceeding in any court or other tribunal or before any arbitrator against or in any other way relating adversely to, or adversely affecting any of the Borrower, the Parent, the Company, any other Loan Party or any other Subsidiary or any of their respective properties, assets or businesses (including but not limited to any notification of a material violation of any law or regulation) which, if determined or resolved adversely to such Person, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and prompt notice of the receipt of notice that any United States income tax returns of the Company, the Parent or any Loan Party or any other Subsidiary are being audited;

(h) A copy of any amendment to the certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents of the Borrower or any other Loan Party within five (5) Business Days after the effectiveness thereof;

(i) Prompt notice of (i) any change in the Chairman, Chief Executive Officer, President or Chief Financial Officer of the Company, the Parent, the Borrower, the Management Company, Parent or any other Loan Party, (ii) any change in the business, assets, liabilities, financial condition, results of operations or business prospects of the Company, Parent, any Loan Party or any other Subsidiary or (iii) the occurrence of any other event which, in the case of any of the immediately preceding clauses (i) through (iii), has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(j) Prompt notice of the (i) occurrence of any Default or Event of Default (to the extent not delivered to the Borrower by the Administrative Agent) or (ii) any event which constitutes or which with the passage of time, the giving of notice, or otherwise, would constitute a default or event of default by any Loan Party under any Material Contract to which any such Person is a party or by which any such Person or any of its respective properties may be bound to the extent that such default or event of default under subclause (ii) above has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(k) Prompt notice of any order, judgment or decree which is not covered by insurance and which is in excess of \$10,000,000 having been entered against the Borrower or any other Loan Party or any of their respective properties or assets;

(l) Together with each deposit made into the Capex Reserve Account pursuant to Section 8.13(a), a report detailing capital expenditures (including, any deferred maintenance), tenant allowances and redevelopment costs for each Collateral Property during such First Semi-Annual Period or Second Semi-Annual Period, as the case may be;

(m) Any written notification of a material violation of any Applicable Law that shall have been received by the Company, Parent or any Loan Party from any Governmental Authority;

(n) Prompt notice of (a) any litigation pending or credibly threatened in writing against the any Loan Party with respect to any Collateral Property that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; (b) any casualty expected to result in a loss of more than \$2,500,000 affecting any portion of the Collateral Properties, which is insured or uninsured or partially uninsured loss through fire, theft, liability or damage; and (c) any order, judgment or decree having been entered against any Loan Party or any other Subsidiary of the Borrower or any of their respective properties or assets that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(o) No less frequently than (i) once per semi-annual period, leasing status reports for the Collateral Properties identifying co-tenancy issues, current occupancy and lease maturities in the next twelve months, major tenant closures and other material lease changes and (ii) once per calendar quarter, a report for the Collateral Properties identifying all tenants at Collateral Properties with square footage of more than or equal to 20,000 square feet that have expiring leases and will not be renewing, in addition to any tenants that are terminating their respective lease early thru a lease buy-out;

(p) No less frequently than once per calendar quarter, commencing after the filing or delivery of year-end financials ending December 31, 2021 pursuant to Section 9.2(a), the Borrower shall host, for Administrative Agent and the Lenders, a management conversation with Senior Officers to discuss any material updates, and respond to questions, with respect to the Collateral Properties;

(q) Promptly, upon each request, such information and documentation as a Lender may request in order to comply with applicable “know your customer” and Anti-Money Laundering Laws, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation;

(r) Promptly, and in any event within ten (10) days after the Borrower obtains knowledge thereof, the Borrower shall provide the Administrative Agent with written notice of the occurrence of any of the following: (i) the Borrower, any Loan Party or any other Subsidiary shall receive notice that any violation of or non-compliance with any Environmental Law has or may have been committed or is threatened; (ii) the Borrower, any Loan Party or any other Subsidiary shall receive notice that any administrative or judicial complaint, order or petition has been filed

or other proceeding has been initiated, or is about to be filed or initiated against any such Person alleging any violation of or non-compliance with any Environmental Law or requiring any such Person to take any action in connection with the release or threatened release of Hazardous Materials; (iii) the Borrower, any Loan Party or any other Subsidiary shall receive any notice from a Governmental Authority or private party alleging that any such Person may be liable or responsible for any costs associated with a response to, or remediation or cleanup of, a release or threatened release of Hazardous Materials or any damages caused thereby, or (iv) the Borrower, any Loan Party or any other Subsidiary shall receive notice of any other fact, circumstance or condition that could reasonably be expected to form the basis of an Environmental Claim, in each of the cases described in the immediately preceding clauses (i) through (iv), with respect to the Collateral Properties, and with respect to the Properties that are not Collateral Properties, where the matters covered by notices referred to in any of the immediately preceding clauses (i) through (iv), whether individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(s) [Reserved];

(t) To the extent the Borrower, any Loan Party or any other Subsidiary is aware of the same, prompt notice of any matter that has had, or which could reasonably be expected to have, a Material Adverse Effect;

(u) From time to time and promptly upon each request, such data, certificates, reports, statements, opinions of counsel, documents or further information regarding any Collateral Property or the business, assets, liabilities, financial condition, results of operations or business prospects of the Borrower, any other Loan Party or the Management Company as the Administrative Agent or any Lender (acting through the Administrative Agent) may reasonably request;

(v) No more than thirty (30) days following the consummation of any transaction of acquisition, merger or purchase of assets, involving consideration, or valued, in excess of \$300,000,000, whether in a single transaction or related series of transactions, written notice of such transaction or transactions, together with a reasonably detailed description thereof; provided, however, that this Section 9.4(v) shall not eliminate any requirement in Section 10.4 or elsewhere herein that Borrower provide notice to the Administrative Agent and/or receive approval or consent from the Administrative Agent and/or the Lenders prior to such transactions;

(w) No more than ten (10) Business Days following the consummation of any disposition of an asset or pool of assets, involving consideration, or valued, in excess of \$500,000,000, whether in a single transaction or related series of transactions, written notice of such transaction or transactions, together with a reasonably detailed description thereof; provided, however, that this Section 9.4(w) shall not eliminate any requirement in Section 10.4 or elsewhere herein that Borrower provide notice to the Administrative Agent and/or receive approval or consent from the Administrative Agent and/or the Lenders prior to such transactions;

(x) Prompt written notice of any change in the information provided in the Beneficial Ownership Certification delivered to any Lender that would result in a change to the list of beneficial owners identified in such certification; and

(y) Not later than the 30 days prior to the end of each calendar year, the Borrower shall either (a) request from First American Title Insurance Company (“**First American**”) and provide to the Administrative Agent, verification from First American that no Material Event (as defined in that certain Certificate delivered by First American to the Administrative Agent with respect to First American’s Reinsurance Program (as defined therein) on or prior to the Effective Date (the “**Reinsurance Certificate**”)) has occurred, or (b) if such a Material Event has occurred, cause First American to purchase facultative reinsurance, at the Borrower’s cost, from another title insurance company in an amount contemplated by the Reinsurance Certificate and otherwise in form and substance reasonably acceptable to the Administrative Agent.

Section 9.5. **Electronic Delivery of Certain Information.**

(a) Documents required to be delivered pursuant to the Loan Documents shall be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website or a website sponsored or hosted by the Administrative Agent or the Borrower); provided that (i) the foregoing shall not apply to (x) notices to any Lender pursuant to Article II and (y) any Lender that has notified the Administrative Agent or the Borrower that it cannot or does not want to receive electronic communications and (ii) documents required to be delivered pursuant to Sections 9.1, 9.2, 9.4(b) and 9.4(c) (other than press releases) shall be deemed to have been delivered on the date on which such documents are filed for public availability on the SEC’s Electronic Data Gathering and Retrieval System (it being understood that the Borrower shall not be required to provide notice to the Administrative Agent or any Lender of such electronic filing of information (other than with respect to financial statements pursuant to Sections 9.1 and 9.2, for which the Borrower shall provide notification via electronic mail to the Administrative Agent) to satisfy its reporting obligations). The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic delivery pursuant to procedures approved by it for all or particular notices or communications. Documents or notices delivered electronically shall be deemed to have been delivered twenty-four (24) hours after the date and time on which the Administrative Agent or the Borrower posts such documents or the documents become available on a commercial website and the Administrative Agent or the Borrower notifies (except in such instances where notification is not required pursuant to this Section 9.5(a)) each Lender of said posting and provides a link thereto provided if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 11:00 a.m. Central time on the opening of business on the next Business Day for the recipient. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of any documents to the Administrative Agent (if requested by the Administrative Agent) or to any Lender that requests such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery of it of paper copies and maintaining its paper or electronic documents.

(b) Documents required to be delivered pursuant to Article II may be delivered electronically to a website provided for such purpose by the Administrative Agent pursuant to the procedures provided to the Borrower by the Administrative Agent.

Section 9.6. **Public/Private Information.**

The Borrower, the Parent and the Company shall cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Borrower, the Parent or the Company. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of the Borrower, the Company or the Parent to the Administrative Agent and the Lenders (collectively, “**Information Materials**”) pursuant to this Article and the Borrower, the Parent and the Company shall designate Information Materials (a) that are either available to the public or not material with respect to the Borrower and its Subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as “Public Information” and (b) that are not Public Information as “Private Information”; provided that, the Borrower, Parent, and the Company shall designate similar quarterly and annual information in similar detail as the (a) Form 10-K and supplemental financial information filed with the SEC during the fiscal year ended December 31, 2020 and (b) Form 10-Q and supplemental financial information filed with the SEC during the fiscal quarter ended September 30, 2020, each as “Public Information” to the extent such information would have been deemed “Public Information” pursuant to clause (a) above, even if such Persons and/or their respective Affiliates are not registered with the SEC post-reorganization; provided, further that the Borrower, Parent and the Company shall, to the extent requested by the Administrative Agent, hold quarterly lender calls (at times to be mutually agreed between the Borrower and the Administrative Agent) to discuss such Information Materials and allow for a questions and answers session. Notwithstanding the foregoing, each Lender which does not wish to receive Private Information agrees to cause at least one individual at or on behalf of such Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of any website provided pursuant to Section 9.5 in order to enable such Lender or its delegate, in accordance with such Lender’s compliance procedures and Applicable Law, including United States federal and state securities laws, to make reference to Information Materials that are not made available through the “Public Side Information” portion of such website provided pursuant to Section 9.5 and that may contain material non-public information with respect to the Parent, the Company, the Borrower and the Subsidiaries or its or their securities for purposes of United States federal and state securities laws.

Section 9.7. **Patriot Act Notice; Compliance.**

The Patriot Act and federal regulations issued with respect thereto require 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, a Lender (for itself and/or as a non-fiduciary agent for all Lenders hereunder) may from time-to-time request, and the Borrower shall, and shall cause the Parent, the Company and the other Loan Parties, to provide promptly upon any such request to such Lender, the Borrower’s, the Parent’s, the Company’s, each Subsidiary Guarantor’s and each other Loan Party’s name, address, tax identification number and/or such other identification information as shall be necessary for such Lender to comply with federal law. An “account” for this purpose may include, without limitation, a deposit account, a

cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product. Each Lender will treat all information furnished to it in accordance with this Section 9.7 in the manner required by Section 13.9 of this Agreement.

Article X. Negative Covenants

For so long as this Agreement is in effect, unless the Requisite Lenders (or, if required pursuant to Section 13.7, all of the Lenders) shall otherwise consent in the manner set forth in Section 13.7, the Borrower shall comply with the following covenants:

Section 10.1. Financial Covenants.

(a) Minimum Capital Expenditure Investments. Commencing with the fiscal year ending December 31, 2022, the Loan Parties shall, in each fiscal year occurring prior to the Maturity Date, make Capital Expenditures in respect of the Collateral Properties in an aggregate amount of not less than the Minimum Capital Expenditure Amount, provided that the Loan Parties shall be deemed to comply with this clause (a) so long as any shortfall below the Minimum Capital Expenditure Amount for such fiscal year is deposited and held in the Capex Reserve Account to be utilized for Capital Expenditures in any succeeding fiscal year.

(b) Interest Coverage Ratio. Commencing with the fiscal quarter ending December 31, 2021, the Borrower will not, as of the last day of any fiscal quarter ending prior to the Maturity Date, permit the Interest Coverage Ratio to be less than 1.50:1.00

(c) Minimum Debt Yield Ratio. Commencing with the fiscal quarter ending March 31, 2023, the Debt Yield Ratio, as of the last day of any fiscal quarter ending prior to the Maturity Date, shall not be less than or equal to eleven and a half percent (11.50%).

(d) Occupancy Rate. Commencing with the fiscal quarter ending March 31, 2023, the aggregate Occupancy Rate of the Collateral Properties, as of the last day of any fiscal quarter ending prior to the Maturity Date, shall not be less than seventy five percent (75%).

(e) Liquidity. Commencing with the fiscal quarter ending December 31, 2021, the Borrower shall not permit aggregate unrestricted cash (calculated on a consolidated basis for the Borrower and its Subsidiaries), as of the last day of any fiscal quarter ending prior to the Maturity Date, to be less than \$5,000,000.

Section 10.2. Negative Pledge.

(a) The Borrower shall not, and shall not permit any Subsidiary to, (i) create, assume, incur, permit or suffer to exist any Lien on any Collateral Property, any direct or indirect Equity Interest owned by the Borrower in any Person owning any Collateral Property or any of its other properties, assets, income or profits of any character whether now owned or hereafter acquired, except for Permitted Liens (but not, with respect to any Collateral, any Permitted Liens described in clause (g) of the definition of that term), (ii) permit any Collateral Property or any of its other properties, assets, income or profits or any direct or indirect ownership interest owned by the Borrower in any Person owning any properties, assets, income or profits, to be subject to a Negative Pledge or (iii) create, assume, incur, permit or suffer to exist any Lien on other Collateral,

or any direct or indirect ownership interest owned by the Borrower in any Person owning any other Collateral, except for Permitted Liens.

(b) The Borrower shall not (i) create, assume, incur, permit or suffer to exist any Lien on any Equity Interests of any Subsidiary of the Borrower holding title to any Collateral Property or the Equity Interests of any Subsidiary of the Borrower that owns, directly or indirectly, any Equity Interests in any Subsidiary of the Borrower holding title to any Collateral Property or any other Collateral (all such Equity Interests under this clause (i) being “**Specified Equity Interests**”), except for Permitted Liens or (ii) permit any Specified Equity Interests to be subject to a Negative Pledge.

Section 10.3. **Restrictions on Intercompany Transfers.**

The Borrower shall not, and shall not permit any Subsidiary to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to: (a) pay dividends or make any other distribution on any of such Subsidiary’s Equity Interests owned by the Borrower or any other Subsidiary; (b) pay any Indebtedness owed to the Borrower or any other Subsidiary; (c) make loans or advances to the Borrower or any other Subsidiary; or (d) transfer any of its property or assets to the Borrower or any other Subsidiary; other than (i) with respect to clauses (a) – (d) those encumbrances or restrictions contained in any Loan Document or, (ii) with respect to clause (d), customary provisions restricting assignment of any agreement entered into by the Borrower, any other Loan Party or any Subsidiary in the ordinary course of business.

Section 10.4. **Merger, Consolidation, Sales of Assets and Other Arrangements.**

Without the prior written consent of the Requisite Lenders, such consent not to be unreasonably withheld, the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, (a) enter into any transaction of merger or consolidation; (b) liquidate, windup or dissolve itself (or suffer any liquidation or dissolution); (c) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions and whether effected pursuant to a Division or otherwise, all or any part of its business or assets, whether now owned or hereafter acquired; (d) consummate a Division as the Dividing Person; or (e) acquire a Substantial Amount of the assets of, or make an Investment of a Substantial Amount in, any other Person; provided, however, that:

(i) any Subsidiary of the Borrower may merge with (x) the Borrower, provided that the Borrower shall be the continuing or surviving Person or (y) any other Subsidiary of the Borrower, provided that if such merger involves a Loan Party, such Loan Party is the survivor;

(ii) any Subsidiary may sell, transfer or dispose of its assets to a Loan Party;

(iii) a Loan Party and any Subsidiary may convey, sell, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business or assets, or the capital stock of or other Equity Interests in any of its Subsidiaries, and immediately thereafter liquidate, provided that immediately prior to any such

conveyance, sale, transfer, disposition or liquidation and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence and, in the case of any Collateral Property, the Borrower complies with the terms of Section 2.8(b)(ii), Section 2.8(b)(iii) and Section 4.2, to the extent applicable thereto;

(iv) any Loan Party and any other Subsidiary may, directly or indirectly, (A) acquire (whether by purchase, acquisition of Equity Interests of a Person, or as a result of a merger or consolidation) the assets of, or make an Investment in, any other Person in an amount equal to or greater than a Substantial Amount, and (B) sell, lease or otherwise transfer, whether by one or a series of transactions, a Substantial Amount of assets (including capital stock or other securities of Subsidiaries) to any other Person, so long as, in each case, (1) the Borrower shall have given the Administrative Agent and the Lenders at least thirty (30) days prior written notice of such consolidation, merger, acquisition, Investment, sale, lease or other transfer, together with all information related to such consolidation, merger, acquisition, Investment, sale, lease or transfer as the Administrative Agent may reasonably request; (2) immediately prior thereto, and immediately thereafter and after giving effect thereto, no Default under Section 11.1(a), Section 11.1(e) or Section 11.1(f) exists and no Event of Default has occurred and is continuing; (3) in the case of a consolidation or merger involving the Borrower or a Loan Party which owns a Collateral Property, such Person shall be the survivor thereof; (4) at the time the Borrower gives notice pursuant to clause (1) of this subsection, the Borrower shall have delivered to the Administrative Agent for distribution to each of the Lenders a Compliance Certificate, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties with the terms and conditions of this Agreement and the other Loan Documents, including, without limitation, the financial covenants contained in Section 10.1, after giving effect to such consolidation, merger, acquisition, Investment, sale, lease or other transfer; and (5) the Borrower complies with the terms of Section 2.8(b)(ii), Section 2.8(b)(iii) and Section 4.2, to the extent applicable thereto;

(v) the Loan Parties may license, sublicense, lease and sublease their respective assets, as licensor, lessor or sublessor (as the case may be), in the ordinary course of their business; and

(vi) if any Loan Party that is a limited liability company consummates a Division (with or without the prior consent of the Requisite Lenders as required above), each Division Successor shall be required to comply with the obligations set forth in Sections 8.10 and 8.14 and the other further assurances obligations set forth in the Loan Documents and become a Loan Party, as applicable, under this Agreement and the other Loan Documents.

Further, no Loan Party shall enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another Person.

Notwithstanding the foregoing, this Section 10.4 shall not restrict the sale or disposition of any Collateral Property, any other property or any Subsidiary owner thereof, to the extent made in accordance with Sections 2.8(b) and Section 4.2, as applicable.

Section 10.5. **Plans.**

The Borrower shall not, and shall not permit any Subsidiary to, permit any of its respective assets to become or be deemed to be “plan assets” within the meaning of 29 C.F.R.10.3-101, as modified by Section 3(42) of ERISA. The Borrower shall not cause or permit to occur, and shall not permit any other member of the ERISA Group to cause or permit to occur, any ERISA Event if such ERISA Event could reasonably be expected to have a Material Adverse Effect.

Section 10.6. **Fiscal Year.**

The Borrower shall not, and shall not permit any Subsidiary to, change its fiscal year from that in effect as of the Agreement Date.

Section 10.7. **Modifications of Organizational Documents and Material Contracts.**

The Borrower shall not, and shall not permit any Subsidiary to, amend, supplement, restate or otherwise modify or waive the application of any provision of its certificate or articles of incorporation or formation, by-laws, operating agreement, declaration of trust, partnership agreement or other applicable organizational document if such amendment, supplement, restatement or other modification (a) is adverse to the interest of the Administrative Agent or the Lenders or (b) could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that notwithstanding anything to the contrary herein or in any other Loan Document, so long as (i) the Administrative Agent shall have received at least fifteen (15) Business Days prior written notice thereof (or such shorter period of notice as the Administrative Agent shall agree in its sole discretion) and (ii) the Administrative Agent shall have acknowledged in writing that either (x) such change will not adversely affect the validity, perfection or priority of the Administrative Agent’s security interest in the Collateral, or (y) any reasonable action requested by the Administrative Agent in connection therewith has been completed or taken (including any action to continue the perfection of any Liens in favor of the Administrative Agent, on its behalf and on behalf of the Lender Parties, in any Collateral), any Loan Party or other Subsidiary may change its name as it appears in official filings in the state of its incorporation or organization. The Borrower shall not enter into, and shall not permit any Subsidiary to enter into, any amendment or modification to any Material Contract which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 10.8. **Indebtedness.**

The Borrower shall not, and shall not permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) the Obligations;
- (b) Indebtedness existing on the Effective Date and listed on Schedule 10.8;
- (c) Unsecured intercompany Indebtedness owed by any Loan Party to (i) another Loan Party or (ii) the Company and/or the Parent, but only to the extent (x) such unsecured intercompany Indebtedness is expressly subordinated to the Obligations, pursuant to a written agreement reasonably acceptable to the Administrative Agent and (y) with respect to subclause (ii), (1) the

aggregate amount of such Unsecured Indebtedness shall not exceed at any time ten million Dollars \$10,000,000, without the prior consent of Requisite Lenders, (2) no principal amortization payments shall be due thereunder on or prior to the date that is ninety-one (91) days after the Maturity Date, and (3) such Unsecured Indebtedness shall not require or permit cash interest payments on or prior to the date that is ninety-one (91) days after the Maturity Date.

(d) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business and related to the Collateral Properties;

(e) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing and related to the Collateral Properties;

(f) guarantees by any Loan Party or Subsidiary in respect of Indebtedness permitted under this Agreement;

(g) Indebtedness consisting of (i) the financing or insurance premiums, (ii) take-or-pay obligations contained in supply arrangements and (iii) obligations arising under indemnity agreements to title insurers to cause such title insurers to issue to the Administrative Agent title insurance policies, in each case of the foregoing, incurred in the ordinary course of business and in connection with the Collateral Properties;

(h) Unsecured Indebtedness in respect of obligations of Borrower or any Subsidiary to unaffiliated third parties to pay the deferred purchase price of goods or services or progress payments in connection with such goods or services; provided that such obligations are incurred with respect to the Collateral Properties and in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money; and

(i) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (h) above to the extent such items would qualify as Indebtedness pursuant to GAAP.

Section 10.9. Transactions with Affiliates.

The Borrower shall not permit to exist or enter into, and shall not permit any Subsidiary to permit to exist or enter into, any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Subsidiary, except (a) as set forth on Schedule 7.1(r), (b) transactions pursuant to the reasonable requirements of the business of the Borrower or any of its Subsidiaries, and upon fair and reasonable terms which are no less favorable to the Borrower or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate as determined by the Borrower in good faith (which shall include but not be limited to Property Management Agreements in effect as of the Effective Date, which shall (as in effect as of the Effective Date) be deemed to satisfy this Section 10.9) or (c) any transaction between any Loan Party and the Management Company and upon fair and reasonable terms which are no less favorable to the Borrower, such Subsidiary, or any Loan

Party than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate as determined by the Borrower in good faith (which shall include but not be limited to Property Management Agreements in effect as of the Effective Date, which shall (as in effect as of the Effective Date) be deemed to satisfy this Section 10.9). Notwithstanding the foregoing, no payments may be made with respect to any items set forth on such Schedule 7.1(r) if a Default under Section 11.1(a), Section 11.1(e) or Section 11.1(f) or an Event of Default exists or would result therefrom.

Section 10.10. **[Reserved]**.

Section 10.11. **Derivatives Contracts.**

The Borrower shall not, and shall not permit any Subsidiary to enter into or become obligated in respect of, Derivatives Contracts.

Section 10.12. **Tenant Leases.**

The Borrower shall not, and shall not permit any Subsidiary to, enter into any Tenant Lease in respect of any Collateral Property exceeding 50,000 rentable square feet which does not materially conform to the form of lease for the applicable Collateral Property previously delivered to the Administrative Agent unless the Borrower obtains the prior written approval of the Administrative Agent of any modified or additional terms (including the economic terms thereof) included therein.

Section 10.13. **Dividends and Other Restricted Payments.**

The Borrower shall not, and shall not permit any of its Subsidiaries to, declare or make any Restricted Payment except pursuant to Section 8.12; provided, however, the Borrower and its Subsidiaries shall be permitted to declare or make the following Restricted Payments:

- (a) Investments solely to the extent such Investments are 100% funded with capital contributions received by the Borrower or any Subsidiary from the Parent or funds otherwise distributable to the Parent under Section 8.12;
- (b) Restricted Payments and Investments, in each case solely to the extent being made in or to the Borrower and in or to any Subsidiary that is a Loan Party;
- (c) Investments in cash;
- (d) Investments consisting of purchase or other acquisitions of inventory, supplies, services, material or equipment or marketing with unaffiliated third parties in the ordinary course of business consistent with past practices, in each case, only to the extent each such Investment is made with respect to a Collateral Property and is a permitted operating expense and would be considered an Investment hereunder and not simply an operating expense;
- (e) Investments in any Subsidiary in connection with intercompany cash management arrangements and related activities arising in the ordinary course of business, in each case, so long

as such Investments are made with respect to a Collateral Property and are subject to a deposit account control agreement in favor of the Administrative Agent for the benefit of the Lenders;

(f) Investments with unaffiliated third parties in the ordinary course of business consistent with past practices in connection with obtaining, maintaining or renewing leases or occupancy contracts of a Collateral Property;

(g) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits into, in each case, (x) as a result of the operations of the business with unaffiliated third parties in the ordinary course of business consistent with past practices and (y) in connection with a Collateral Property;

(h) deposits, prepayments and other credits to suppliers and deposits in connection with lease obligations, taxes, insurance and similar items, in each case made (x) in connection with a Collateral Property, and (y) in the ordinary course of business consistent with past practice and securing contractual obligations of the Borrower and a Subsidiary to an unaffiliated third party;

(i) the payment of any franchise Taxes imposed on the Borrower or another Loan Party and other Taxes and expenses required to maintain Borrower's or another Loan Party's corporate existence and any state non-income Taxes imposed on the Borrower or another Loan Party, in each case in the ordinary course of business; and

(j) Investments permitted pursuant to Section 10.4.

Article XI. Default

Section 11.1. Events of Default.

Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of Applicable Law or pursuant to any judgment or order of any Governmental Authority:

(a) Default in Payment. The Borrower shall fail to pay when due under this Agreement or any other Loan Document (whether upon demand, at maturity, by reason of acceleration or otherwise) the principal of, or any accrued interest on, any of the Loans, or shall fail to pay any of the other payment Obligations owing by the Borrower under this Agreement, any other Loan Document, or any other Loan Party shall fail to pay when due any payment obligation owing by such Loan Party under any Loan Document to which it is a party, and, solely in the case of interest or any other payment Obligation (other than principal of the Loans due at maturity), such failure continues for a period of ten (10) days after the date the Administrative Agent gives the Borrower notice of such failure.

(b) Default in Performance.

(i) The Borrower or any other Loan Party, and solely to the extent expressly applicable thereto, the Parent or the Company, shall fail to perform or observe any term, covenant, condition or agreement on its part to be performed or observed and contained in Article IV, Section 8.1(a) (solely with respect to the existence of the Company,

Parent, Borrower or any Loan Party), Section 8.8, Section 8.12, Article IX or Article X and such failure shall continue for a period of ten (10) days after the earlier of (x) the date upon which any Senior Officer has actual knowledge of such failure and that such failure constituted a Default or (y) the date upon which the Borrower has received written notice of such failure from the Administrative Agent or any other Lender; or

(ii) The Borrower or any other Loan Party and, solely to the extent expressly applicable thereto, the Parent or the Company, shall fail to perform or observe any other term, covenant, condition or agreement contained in this Agreement or any other Loan Document to which it is a party and not otherwise mentioned in this Section 11.1(b), and in the case of this subsection (b)(ii) only, such failure shall continue for a period of thirty (30) days after the earlier of (x) the date upon which any Senior Officer has actual knowledge of such failure and that such failure constituted a Default or (y) the date upon which the Borrower has received written notice of such failure from the Administrative Agent.

(c) Misrepresentations. Any written statement, representation or warranty made or deemed made by or on behalf of any Loan Party under this Agreement or under any other Loan Document, or any amendment hereto or thereto, or in any other writing or statement at any time furnished by, or at the direction of, any Loan Party to the Administrative Agent or any Lender under or in connection with this Agreement or any other Loan Documents, shall at any time prove to have been incorrect or misleading in any material respect when furnished or made or deemed made and such written statement, representation or warranty (or the underlying matter thereof) shall not have been remedied for a period of thirty (30) days after the date upon which the Borrower has received written notice of such incorrect or misleading written statement, representation or warranty from the Administrative Agent.

(d) Cross-Default.

(i) Any of the Borrower, any other Loan Party or any Subsidiary shall fail to make any payment when due and payable (subject to any notice and after giving effect to any applicable grace or cure period) in respect of any Indebtedness (other than the Loans) having an aggregate outstanding principal amount (including undrawn committed or available amounts) (or, in the case of any Derivatives Contract, having, without regard to the effect of any close-out netting provision, a Derivatives Termination Value) equal to or greater than \$5,000,000, individually or in the aggregate with all such other Indebtedness as to which such a failure exists (“**Material Borrower Indebtedness**”) or any other event or condition occurs that results in any Material Borrower Indebtedness becoming due and payable prior to its scheduled maturity or that permits the holders thereof or any agent or trustee on their behalf to cause such Material Borrower Indebtedness to become due or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(ii) With respect to the Parent and the New Notes Issuer, so long as the Parent Guaranty Termination Date has not yet occurred, or with respect to the Company, the REIT Bad-Act Guaranty Termination Event has not yet occurred, any of the Parent, the Company, or the New Notes Issuer, as applicable, shall fail to make any payment when

due and payable (subject to any notice and after giving effect to any applicable grace or cure period) in respect of any Recourse Indebtedness having an aggregate outstanding principal amount (including undrawn committed or available amounts) equal to or greater than \$150,000,000 individually or in the aggregate for any such Recourse Indebtedness (“**Material Other Indebtedness**”) or any other event or condition occurs that results in any Material Other Indebtedness becoming due and payable prior to its scheduled maturity or that permits the holders thereof or any agent or trustee on their behalf to cause such Material Other Indebtedness to become due or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that an Event of Default under this Section 11.1(d)(ii) shall be deemed not to occur to the extent that such Material Other Indebtedness is (A) secured by real property not owned, directly or indirectly, by the Borrower and (B) the Parent or the New Notes Issuer, as the case may be, or their respective Subsidiaries, have agreed with the holder (or any agent or trustee therefor) of such Material Other Indebtedness to a foreclosure or similar arrangement in respect of such real property (or the equity interests of any direct or indirect owner thereof) in exchange for an agreement by such holder (or any agent or trustee therefor) to not pursue the Parent, the Company or the New Notes Issuer, as the case may be, or their respective Subsidiaries, on any recourse claims related to such Material Other Indebtedness.

(e) Voluntary Bankruptcy Proceeding. (A) The Company, Parent, Borrower or any other Loan Party shall: (i) commence a voluntary case under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect); (ii) file a petition seeking to take advantage of any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (iii) consent to, or fail to contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other Applicable Laws or consent to any proceeding or action described in the immediately following subsection (f); (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any Applicable Law; or (viii) take any corporate, partnership or similar action for the purpose of effecting any of the foregoing or (B) the Company, Parent, the Borrower, any other Loan Party shall generally not pay its debts as such debts become due.

(f) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against the Company, Parent, Borrower or any other Loan Party in any court of competent jurisdiction seeking: (i) relief under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect) or under any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person, or of all or any substantial part of the assets, domestic or foreign, of such Person, and in the case of either clause (i) or (ii), such case or proceeding shall continue undismissed or unstayed for a period of ninety (90) consecutive calendar days, or an order granting the remedy or other relief requested in such case or proceeding (including, but not limited to, an order for relief under such Bankruptcy Code or such other federal bankruptcy laws) shall be entered.

(g) Revocation of Loan Documents. Any of the Company, Parent, Borrower or any other Loan Party shall (or shall attempt, by any action at law, suit in equity or other legal proceeding, to) disavow, revoke or terminate any Loan Document to which it is a party or shall otherwise challenge or contest in any action, suit or proceeding in any court or before any Governmental Authority the validity or enforceability of any such Loan Document or any such Loan Document shall cease to be in full force and effect (except as a result of the express terms thereof).

(h) Judgment. A judgment or order for the payment of money or for an injunction or other non-monetary relief shall be entered against the Borrower or any other Loan Party or, unless and until the REIT Bad-Act Guaranty Termination Date has occurred, the Company or, unless and until the Parent Guarantor Termination Date has occurred, the Parent, by any court or other tribunal and (i) such judgment or order shall continue for a period of sixty (60) days without being paid, stayed, dismissed through appropriate appellate proceedings or otherwise bonded and (ii) either (A) the amount of such judgment or order for which insurance coverage has not been acknowledged in writing by the applicable insurance carrier (or the amount as to which the insurer has denied liability) exceeds, individually or together with all other such judgments or orders entered against (1) the Borrower and any other Loan Party, \$5,000,000, and (2) against the Parent or the Company, \$150,000,000, or (B) in the case of an injunction or other non-monetary relief, such injunction, judgment or order could reasonably be expected to have a Material Adverse Effect.

(i) Attachment. A warrant, writ of attachment, execution or similar process shall be issued against any property of the Borrower or any other Loan Party or, unless and until the REIT Bad-Act Guaranty Termination Date has occurred, the Company or, unless and until the Parent Guarantor Termination Date has occurred, the Parent, which exceeds, individually or together with all other such warrants, writs, executions and processes, with respect to the Borrower or any other Loan Party, \$5,000,000 and with respect to the Company or the Parent, \$150,000,000 and such warrant, writ, execution or process shall not be paid, discharged, vacated, stayed or bonded for a period of sixty (60) days; provided, however, that if a bond has been issued in favor of the claimant or other Person obtaining such warrant, writ, execution or process, the issuer of such bond shall execute a waiver or subordination agreement in form and substance satisfactory to the Administrative Agent pursuant to which the issuer of such bond subordinates its right of reimbursement, contribution or subrogation to the Obligations and waives or subordinates any Lien it may have on the assets of the Parent, Company, Borrower or any other Loan Party.

(j) ERISA.

(i) Any ERISA Event shall have occurred that results or could reasonably be expected to result in liability to any member of the ERISA Group aggregating in excess of \$50,000,000; or

(ii) The “benefit obligation” of all Plans exceeds the “fair market value of plan assets” for such Plans by more than \$50,000,000, all as determined, and with such terms defined, in accordance with FASB ASC 715.

Documents. (k) Loan Documents. An Event of Default (as defined therein) shall occur under any of the other Loan Documents.

(l) Change of Control/Change in Management.

(i) (A) the general partner of the Parent shall cease to be a Wholly Owned Subsidiary of the REIT or the REIT shall cease to have the sole and exclusive power to exercise all management and control over the Parent (other than customary limited consent rights held by limited partners of Parent or any limitations on management and control pursuant to Applicable Law) or (B) the REIT or a Wholly-Owned Subsidiary of the REIT shall cease to be the sole general partner of the Parent;

(ii) The Parent shall cease to beneficially own and control, directly or indirectly, one hundred percent (100%) of the outstanding Equity Interests of the Borrower, free and clear of any Liens thereon (other than Permitted Liens); or

(iii) Unless otherwise expressly permitted hereunder, the Borrower shall cease to beneficially own and control, directly or indirectly, one hundred percent (100%) of the outstanding Equity Interests of each Subsidiary, free and clear of any Liens thereon (other than Permitted Liens);

(m) Damage; Strike; Casualty. Any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than thirty (30) consecutive days beyond the coverage period of any applicable business interruption insurance, the cessation or substantial curtailment of revenue producing activities of the Borrower or any other Loan Party taken as a whole and only if any such event or circumstance could reasonably be expected to have a Material Adverse Effect. Notwithstanding the foregoing, no Event of Default shall exist if within thirty (30) days of the occurrence of any such event or circumstance described in the preceding sentence, the Borrower delivers to the Administrative Agent for prompt distribution to each Lender a written plan acceptable to all of the Lenders to eliminate such event or circumstance. If such event or circumstance is not eliminated within ninety (90) days of the occurrence of such event or circumstance, an Event of Default shall be deemed to have occurred hereunder.

(n) Security Documents. Any material provision of any Security Document shall for any reason cease to be valid and binding on or enforceable against the Borrower or any other Loan Party, as applicable, or any Lien created under any Security Document ceases to be a valid and perfected first priority Lien in any material portion of any Collateral Property purported to be covered thereby; provided, that the foregoing shall not constitute an Event of Default if the loss of priority is due solely to an affirmative release granted by the Administrative Agent.

Section 11.2. Remedies Upon Event of Default.

Upon the occurrence of an Event of Default the following provisions shall apply:

(a) Acceleration; Termination of Facilities.

(i) Automatic. Upon the occurrence of an Event of Default specified in Section 11.1(e) or Section 11.1(f), (1) the principal of, and all accrued interest on, the Loans and the Notes at the time outstanding, (2) [reserved] and (3) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents shall become immediately and automatically due and payable without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties.

(ii) Optional. If any other Event of Default shall exist, the Administrative Agent may, and at the direction of the Requisite Lenders shall declare (A) the principal of, and accrued interest on, the Loans and the Notes at the time outstanding, and (B) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties.

(b) Loan Documents. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise any and all of its rights under any and all of the other Loan Documents.

(c) Applicable Law. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise all other rights and remedies it may have under any Applicable Law.

(d) Appointment of Receiver. To the extent permitted by Applicable Law, the Administrative Agent and the Lenders shall be entitled to the appointment of a receiver for the assets and properties of the Borrower, the other Loan Parties and the Subsidiaries of the Borrower, without notice of any kind whatsoever and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to take possession of all or any portion of the Collateral, the property and/or the business operations of the Borrower, and its Subsidiaries related thereto and to exercise such power as the court shall confer upon such receiver.

(e) [Reserved].

Section 11.3. [Reserved].

Section 11.4. **Marshaling; Payments Set Aside.**

No Lender Party shall be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Guaranteed Obligations. To the extent that any Loan Party makes a payment or payments to a Lender Party, or a Lender Party enforces its security interest or exercises its right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Guaranteed Obligations, or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 11.5. **Allocation of Proceeds.**

If an Event of Default exists, all payments received by the Administrative Agent (or any Lender as a result of its exercise of remedies permitted under Section 13.4) under any of the Loan Documents, in respect of any principal of or interest on the Guaranteed Obligations or any other amounts payable by the Borrower, or any other Loan Party hereunder or thereunder, shall be applied in the following order and priority:

- (a) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such;
- (b) to amounts due to the Administrative Agent and the Lenders in respect of Protective Advances;
- (c) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause (c) payable to them;
- (d) [reserved];
- (e) to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause (e) payable to them;
- (f) [Reserved];
- (g) to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause (g) payable to them; and
- (h) the balance, if any, after all of the Guaranteed Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Section 11.6. **[Reserved]**

Section 11.7. **Rescission of Acceleration by Requisite Lenders.**

If at any time after acceleration of the maturity of the Loans and the other Obligations, the Borrower shall pay all arrears of interest and all payments on account of principal of the Obligations which shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by Applicable Law, on overdue interest, at the rates specified in this Agreement) and all Events of Default and Defaults (other than nonpayment of principal of and accrued interest on the Obligations due and payable solely by virtue of acceleration) shall become remedied or waived to the satisfaction of the Requisite Lenders, then by written notice to the Borrower, the Requisite Lenders may elect, in the sole discretion of such Requisite Lenders, to rescind and annul the acceleration and its consequences. The provisions of the preceding sentence are intended merely to bind all of the Lenders to a decision which may be made at the election of the Requisite Lenders, and are not intended to benefit the Borrower and do not give the Borrower the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are satisfied.

Section 11.8. **Performance by Administrative Agent.**

If the Borrower or any other Loan Party shall fail to perform any covenant, duty or agreement contained in any of the Loan Documents, the Administrative Agent may, but shall not be obligated to, after notice to the Borrower, perform or attempt to perform such covenant, duty or agreement on behalf of the Borrower or such other Loan Party after the expiration of any cure or grace periods set forth herein. In such event, the Borrower shall, at the request of the Administrative Agent, promptly pay any amount reasonably expended by the Administrative Agent in such performance or attempted performance to the Administrative Agent, together with interest thereon at the applicable Post-Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall have any liability or responsibility whatsoever for the performance of any obligation of the Borrower under this Agreement or any other Loan Document.

Section 11.9. **Rights Cumulative.**

(a) Generally. The rights and remedies of the Administrative Agent, and the Lenders under this Agreement, each of the other Loan Documents, shall be cumulative and not exclusive of any rights or remedies which any of them may otherwise have under Applicable Law. In exercising their respective rights and remedies the Administrative Agent and the Lenders may be selective and no failure or delay by any such Lender Party in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

(b) Enforcement by the Administrative Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in

accordance with Article XI for the benefit of all the Lenders; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) [reserved], (iii) [reserved], (iv) any Lender from exercising setoff rights in accordance with Section 13.4 (subject to the terms of Section 3.3), or (v) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Requisite Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Article XI and (y) in addition to the matters set forth in clauses (ii), (iv) and (v) of the preceding proviso and subject to Section 3.3, any Lender may, with the consent of the Requisite Lenders, enforce any rights and remedies available to it and as authorized by the Requisite Lenders.

Section 11.10. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, the Company, the Parent, or any other Loan Party, that the Administrative Agent or any of their respective Affiliates is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 11.11. **Erroneous Payments.**

(a) Each Lender and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender (or the Lender Affiliate) or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender (each such recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 11.11(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "Erroneous Payment"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the Overnight Rate.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an **“Erroneous Payment Return Deficiency”**), then at the sole discretion of the Administrative Agent and upon the Administrative Agent’s written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans with respect to which such Erroneous Payment was made (the **“Erroneous Payment Impacted Class”**) to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent’s applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans of the Erroneous Payment Impacted Class, the **“Erroneous Payment Deficiency Assignment”**) plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, the Administrative Agent may cancel any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such revocation all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 13.6 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such

Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 11.11 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making for a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 11.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Nothing in this Section 11.11 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

Article XII. The Administrative Agent

Section 12.1. Appointment and Authorization.

Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms "Agent", "Administrative Agent", "agent" and similar terms in the Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Administrative Agent shall deliver or otherwise make available to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article IX that the Borrower is not otherwise required to deliver directly to the Lenders. The Administrative Agent will furnish to

any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative the Borrower, any Loan Party or any other Affiliate of the Borrower, pursuant to this Agreement or any other Loan Document not already delivered or otherwise made available to such Lender pursuant to the terms of this Agreement or any such other Loan Document. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of any of the Obligations), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the Obligations; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or an Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all of the Lenders.

Section 12.2. **Administrative Agent as Lender.**

The Lender acting as Administrative Agent shall have the same rights and powers as a Lender under this Agreement or any other Loan Document as the case may be, as any other Lender and may exercise the same as though it were not the Administrative Agent; and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated, include the Lender acting as Administrative Agent in each case in its individual capacity. Such Lender and its Affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Borrower, any other Loan Party or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the other Lenders. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from the Borrower for services in connection with this Agreement, or otherwise without having to account for the same to the other Lenders. The Lenders acknowledge that, pursuant to such activities, the Lender acting as Administrative Agent or its Affiliates may receive information regarding the Borrower, other Loan Parties, other Subsidiaries and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

Section 12.3. **Approvals of Lenders.**

All communications from the Administrative Agent to any Lender requesting such Lender’s determination, consent or approval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, approval or consent is requested, or shall advise such Lender where information, if

any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved, and (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials provided to the Administrative Agent by the Borrower in respect of the matter or issue to be resolved. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the requested determination, consent or approval within ten (10) Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved such requested determination, consent or approval.

Section 12.4. **Notice of Events of Default.**

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default (excepting only a Default or Event of Default under Section 11.1(a)) unless the Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing with reasonable specificity such Default or Event of Default and stating that such notice is a “notice of default.” If any Lender (excluding the Lender which is also serving as the Administrative Agent) becomes aware of any Default or Event of Default, it shall promptly send to the Administrative Agent such a “notice of default”; provided, that a Lender’s failure to provide such a “notice of default” to the Administrative Agent shall not result in any liability of such Lender to any other party to any of the Loan Documents. Further, if the Administrative Agent receives such a “notice of default,” the Administrative Agent shall give prompt notice thereof to the Lenders.

Section 12.5. **Administrative Agent’s Reliance.**

Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein as determined by a court of competent jurisdiction in a final non-appealable judgment. Without limiting the generality of the foregoing, the Administrative Agent: may consult with legal counsel (including its own counsel or counsel for the Borrower, any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its Related Parties: (a) makes any warranty or representation to any Lender, or any other Person and shall be responsible to any Lender, or any other Person for any statement, warranty or representation made or deemed made by the Borrower, any other Loan Party, or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Borrower or other Persons or to inspect the property, books or records of the Borrower or any other Person; (c) shall be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any collateral covered thereby or the perfection or priority of any Lien in favor of the

Administrative Agent on behalf of the Lender Parties in any such collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties and (f) shall be responsible for or have any duty to ascertain or inquire into compliance by Affiliated Lenders with the terms hereof relating to Affiliated Lenders. The Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct in the selection of such agent or attorney-in-fact as determined by a court of competent jurisdiction in a final non-appealable judgment.

Section 12.6. Indemnification of Administrative Agent.

Regardless of whether the transactions contemplated by this Agreement and the other Loan Documents are consummated, each Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) pro rata in accordance with such Lender's respective Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, and reasonable and out-of-pocket costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Administrative Agent (in its capacity as Administrative Agent but not as a "Lender") in any way relating to or arising out of the Loan Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, "**Indemnifiable Amounts**"); provided, however, that no Lender shall be liable for any portion of such Indemnifiable Amounts to the extent resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, however, that no action taken in accordance with the directions of the Requisite Lenders (or all of the Lenders, if expressly required hereunder) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) promptly upon demand for its Pro Rata Share (determined as of the time that the applicable reimbursement is sought) of any out-of-pocket expenses (including the reasonable fees and expenses of outside counsel to the Administrative Agent but excluding the allocated costs, fees and expenses of the Administrative Agent's in-house counsel and legal staff and any expenses incurred by the Administrative Agent in connection with its review of any appraisal or environmental, structural or engineering report) reasonably incurred by the Administrative Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents, any suit or action brought by the Administrative Agent to enforce the terms of the Loan Documents and/or collect any Obligations, any "lender liability" suit or claim brought against the Administrative Agent and/or the Lenders, and any claim or suit brought against the Administrative Agent and/or the Lenders

arising under any Environmental Laws. Such out-of-pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Administrative Agent notwithstanding any claim or assertion that the Administrative Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Administrative Agent that the Administrative Agent will reimburse the Lenders if it is actually and finally determined by a court of competent jurisdiction that the Administrative Agent is not so entitled to indemnification. The agreements in this Section shall survive the payment of the Loans and all other Obligations and the termination of this Agreement. If the Borrower shall reimburse the Administrative Agent for any Indemnifiable Amount following payment by any Lender to the Administrative Agent in respect of such Indemnifiable Amount pursuant to this Section, the Administrative Agent shall share such reimbursement on a ratable basis with each Lender making any such payment.

Section 12.7. Lender Credit Decision, Etc.

Each of the Lenders expressly acknowledges and agrees that neither the Administrative Agent nor any of its Related Parties has made any representations or warranties to such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Company, the Parent, the Borrower, any other Loan Party or any other Subsidiary or Affiliate, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Lender. Each of the Lenders acknowledges that it has made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective Related Parties, and based on the financial statements of the Company, the Parent, Borrower, the other Loan Parties, the other Subsidiaries and other Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Company, the Parent, the Borrower, the other Loan Parties, the other Subsidiaries and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate. Each of the Lenders also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective Related Parties, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Company, the Parent, the Borrower or any other Loan Party of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, the Company, the Parent, the Borrower, any other Loan Party or any other Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders and the Administrative Agent under this Agreement or any of the other Loan Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of the Company, Parent, the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its Related Parties. Each of the Lenders acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to any Lender.

Section 12.8. **Successor Administrative Agent.**

The Administrative Agent may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower. The Administrative Agent may be removed as administrative agent by all of the Lenders (other than the Lender then acting as Administrative Agent) and, provided no Default or Event of Default exists, the Borrower upon thirty (30) days' prior written notice if the Administrative Agent (i) is found by a court of competent jurisdiction in a final, non-appealable judgment to have committed gross negligence or willful misconduct in the course of performing its duties hereunder or (ii) has become or is insolvent or has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment. Upon any such resignation or removal, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed (except that the Borrower shall, in all events, be deemed to have approved each Lender and any of its affiliates as a successor Administrative Agent). If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within thirty (30) days after the current Administrative Agent's giving of notice of resignation or the Lenders' removal of the current Administrative Agent, then the current Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be an Eligible Assignee (but in no event shall any such successor Administrative Agent be a Defaulting Lender, an Affiliate of a Defaulting Lender or an Affiliated Lender); provided that if the Administrative Agent shall notify the Borrower and the Lenders that no Lender has accepted such appointment, then such resignation or removal shall nonetheless become effective in accordance with such notice, or, in the case of removal, at the end of such 30-day period, and (1) the Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made to each Lender directly, until such time as a successor Administrative Agent has been appointed as provided for above in this Section; provided, further that such Lenders so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of the Administrative Agent as if each such Lender were itself the Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article XII shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its affiliates by giving the Borrower and each Lender prior written notice.

Section 12.9. **[Reserved]**.

Section 12.10. **[Reserved]**.

Section 12.11. **Collateral Matters; Protective Advances.**

(a) Each Lender hereby authorizes the Administrative Agent, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or any Loan Document which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to any of the Loan Documents.

(b) The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon indefeasible payment and satisfaction in full of all of the Guaranteed Obligations; (ii) as expressly permitted by, but only in accordance with, the terms of the applicable Loan Document; and (iii) if approved, authorized or ratified in writing by the Requisite Lenders (or such greater number of Lenders as this Agreement or any other Loan Document may expressly provide). Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section.

(c) Upon any sale and transfer of Collateral which is expressly permitted pursuant to the terms of this Agreement, and upon at least five (5) Business Days' prior written request by the Borrower, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative Agent for its benefit and the benefit of the Lender Parties herein or pursuant hereto upon the Collateral that was sold or transferred; provided, however, that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Guaranteed Obligations or any Liens upon (or obligations of the Borrower or any other Loan Party in respect of) all interests retained by the Borrower or any other Loan Party, including, without limitation, the proceeds of such sale or transfer, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, the Administrative Agent shall be authorized to deduct all of the expenses reasonably incurred by the Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) The Administrative Agent shall have no obligation whatsoever to any Lender Party or to any other Person to assure that the Collateral exists or is owned by the Borrower, any other Loan Party or any other Subsidiary or is cared for, protected or insured or that the Liens granted to the Administrative Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Administrative Agent in this Section or in any of the Loan Documents, it being understood and agreed that in respect of

the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, and that the Administrative Agent shall have no duty or liability whatsoever to the Lenders, except to the extent determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from its gross negligence or willful misconduct.

(e) The Administrative Agent may make, and shall be reimbursed by the Lenders (in accordance with their Pro Rata Shares) to the extent not reimbursed by the Borrower for, Protective Advances during any one (1) calendar year with respect to each Property that is Collateral up to the sum of (i) amounts expended to pay real estate taxes, assessments and governmental charges or levies imposed upon such Property; (ii) amounts expended to pay insurance premiums for policies of insurance related to such Property; and (iii) \$500,000. Protective Advances in excess of said sum during any calendar year for any Property that is Collateral shall require the consent of the Requisite Lenders. The Borrower agrees to pay on demand all Protective Advances.

(f) [Reserved].

Section 12.12. **Post-Foreclosure Plans.**

If all or any portion of the Collateral is acquired by the Administrative Agent as a result of a foreclosure or the acceptance of a deed or assignment in lieu of foreclosure, or is retained in satisfaction of all or any part of the Guaranteed Obligations, the title to any such Collateral, or any portion thereof, shall be held in the name of the Administrative Agent or a nominee or Subsidiary of the Administrative Agent, as “Administrative Agent”, for the ratable benefit of all Lender Parties. The Administrative Agent shall prepare a recommended course of action for such Collateral (a “**Post-Foreclosure Plan**”), which shall be subject to the approval of the Requisite Lenders. In accordance with the approved Post-Foreclosure Plan, the Administrative Agent shall manage, operate, repair, administer, complete, construct, restore or otherwise deal with the Collateral acquired, and shall administer all transactions relating thereto, including, without limitation, employing a management agent, leasing agent and other agents, contractors and employees, including agents for the sale of such Collateral, and the collecting of rents and other sums from such Collateral and paying the expenses of such Collateral. Actions taken by the Administrative Agent with respect to the Collateral, which are not specifically provided for in the approved Post-Foreclosure Plan or reasonably incidental thereto, shall require the written consent of the Requisite Lenders by way of supplement to such Post-Foreclosure Plan. Upon demand therefor from time to time, each Lender will contribute its share (based on its Pro Rata Share) of all reasonable costs and expenses incurred by the Administrative Agent pursuant to the approved Post-Foreclosure Plan in connection with the construction, operation, management, maintenance, leasing and sale of such Collateral. In addition, the Administrative Agent shall render or cause to be rendered to each Lender Party, on a monthly basis, an income and expense statement for such Collateral, and each Lender shall promptly contribute its Pro Rata Share of any operating loss for such Collateral, and such other expenses and operating reserves as the Administrative Agent shall deem reasonably necessary pursuant to and in accordance with the approved Post-Foreclosure Plan. To the extent there is Net Operating Income from such Collateral, the Administrative Agent shall, in accordance with the approved Post-Foreclosure Plan, determine the amount and timing of distributions to the Lender Parties. All such distributions shall be made to the Lenders in

accordance with their respective Pro Rata Shares. The Lender Parties acknowledge and agree that if title to any Collateral is obtained by the Administrative Agent or its nominee, such Collateral will not be held as a permanent investment but will be liquidated and the proceeds of such liquidation will be distributed in accordance with Section 11.5 as soon as practicable. The Administrative Agent shall undertake to sell such Collateral, at such price and upon such terms and conditions as the Requisite Lenders reasonably shall determine to be most advantageous to the Lender Parties. Any purchase money mortgage or deed of trust taken in connection with the disposition of such Collateral in accordance with the immediately preceding sentence shall name the Administrative Agent, as Administrative Agent for the Lenders, as the beneficiary or mortgagee. In such case, the Administrative Agent and the Lenders shall enter into an agreement with respect to such purchase money mortgage or deed of trust defining the rights of the Lenders in the same Pro Rata Shares as provided hereunder, which agreement shall be in all material respects similar to this Article XII insofar as the same is appropriate or applicable.

Section 12.13. **Flood Laws.**

Wells Fargo has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the “**Flood Laws**”). Wells Fargo, as administrative agent, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, Wells Fargo reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

Article XIII. Miscellaneous

Section 13.1. **Notices.**

Unless otherwise provided herein (including, without limitation as provided in Section 9.5), communications provided for hereunder shall be in writing and shall be mailed, telecopied, e-mailed, or delivered as follows:

If to the Borrower:

CBL & Associates Limited Partnership
c/o CBL & Associates Properties, Inc.
2030 Hamilton Place Blvd., Suite 500
Chattanooga, Tennessee 37421-6000
Attention: Chief Financial Officer
Telecopy Number: (423) 490-8390
Telephone Number: (423) 855-0001
Email: Farzana.khaleel@cblproperties.com

with an informational copy to:

CBL & Associates Limited Partnership
c/o CBL & Associates Properties, Inc.
2030 Hamilton Place Blvd., Suite 500
Chattanooga, Tennessee 37421-6000
Attention: Finance Counsel
Telecopy Number: (423) 490-8390
Telephone Number: (423) 855-0001
Email: Stan.Hildebrand@cblproperties.com

And a copy to:

CBL & Associates Limited Partnership
c/o CBL & Associates Properties, Inc.
2030 Hamilton Place Blvd., Suite 500
Chattanooga, Tennessee 37421-6000
Attention: Chief Legal Officer
Telecopy Number: (423) 490-8390
Telephone Number: (423) 855-0001
Email: Jeff.Curry@cblproperties.com

If to the Administrative Agent under Article II:2

Wells Fargo Bank, National Association
10 South Wacker Drive, 32nd Floor
Chicago, IL 60606
Attn: Loan Administration
Telecopier Number: 312/782-0969
Telephone Number: 312/269-8250

With an informational copy to:

Wells Fargo Bank, National Association
600 South 4th Street, 9th Floor
Minneapolis, MN 55415
Attn: Kirby Wilson, CRE Agency Services

and

Wells Fargo Bank, National Association
301 S. College Street, 15th Floor
Charlotte, NC 28202
Attn: Ryan Sansavera

² Addresses to be updated.

If to any other Lender:

To such Lender's address or telecopy number as set forth in the applicable Administrative Questionnaire;

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties delivered in compliance with this Section; provided, that a Lender shall only be required to give notice of any such other address to the Administrative Agent and the Borrower. All such notices and other communications shall be effective (i) if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of the Borrower or the Administrative Agent, and Lenders at the addresses specified; (ii) if telecopied, when transmitted; (iii) if hand delivered or sent by overnight courier, when delivered; or (iv) if delivered in accordance with Section 9.5 to the extent applicable; provided, however, that, in the case of the immediately preceding clauses (i), (ii) and (iii), non-receipt of any communication as of the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Notwithstanding the immediately preceding sentence, all notices or communications to the Administrative Agent or any Lender under Article II and Article IV shall be effective only when actually received. None of the Administrative Agent, or any Lender shall incur any liability to the Company, the Parent, the Borrower or any Loan Party (nor shall the Administrative Agent incur any liability to the Lenders) for acting upon any telephonic notice referred to in this Agreement which the Administrative Agent, or such Lender, as the case may be, believes in good faith to have been given by a Person authorized to deliver such notice or for otherwise acting in good faith hereunder. Failure of a Person designated to get a copy of a notice to receive such copy shall not affect the validity of notice properly given to another Person.

Section 13.2. **Expenses.**

The Borrower agrees (a) to pay or reimburse the Administrative Agent for all of its reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, any of the Loan Documents (including due diligence expenses and reasonable travel expenses related to closing), and the consummation of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of counsel to the Administrative Agent and all costs and expenses of the Administrative Agent in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with the Loan Documents and of the Administrative Agent in connection with the review of Properties pursuant to Section 4.1 and the Administrative Agent's other activities under Article IV and the reasonable fees and disbursements of counsel to the Administrative Agent relating to all such activities, (b) to pay all fees and expenses as required pursuant to and in accordance with the Restructuring Support Agreement, (c) to pay or reimburse the Administrative Agent and the Lenders for all their reasonable costs and expenses incurred in connection with the enforcement or preservation of any rights under the Loan Documents, including the reasonable fees and disbursements of counsel retained by the Administrative Agent and of one law firm retained by the Lenders (including the allocated fees and expenses of in-house counsel) and any payments in indemnification or otherwise payable by the Lenders to the Administrative Agent pursuant to the Loan Documents, (d) to pay, and

indemnify and hold harmless the Administrative Agent and the Lenders from, any and all recording and filing fees, if any, which may be payable or determined to be payable in connection with the execution and delivery of any of the Loan Documents, or consummation of any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document and (e) to the extent not already covered by any of the preceding subsections, to pay or reimburse the reasonable fees and disbursements of counsel to the Administrative Agent and any Lender incurred in connection with the representation of the Administrative Agent or such Lender in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 11.1(e) or 11.1(f), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Obligations and (iii) the negotiation and preparation of any debtor-in-possession financing or any plan of reorganization of the Company, the Parent, Borrower or any other Loan Party, whether proposed by the Company, the Parent, the Borrower, such Loan Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding. If the Borrower shall fail to pay any amounts required to be paid by it pursuant to this Section, the Administrative Agent and/or the Lenders may pay such amounts on behalf of the Borrower and such amounts shall be deemed to be Obligations owing hereunder.

Section 13.3. **[Reserved]**.

Section 13.4. **Setoff**.

Subject to Section 3.3 and in addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Borrower hereby authorizes the Administrative Agent, each Lender, each Affiliate of the Administrative Agent or any Lender, and each Participant, at any time or from time to time while an Event of Default exists, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, but in the case of a Lender, an Affiliate of a Lender, or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Administrative Agent, such Lender, any Affiliate of the Administrative Agent, or such Lender, or such Participant, to or for the credit or the account of the Borrower against and on account of any of the Obligations, irrespective of whether or not any or all of the Loans and all other Obligations have been declared to be, or have otherwise become, due and payable as permitted by Section 11.2, and although such Obligations shall be contingent or unmatured. Notwithstanding the foregoing, each Lender hereby waives any right of setoff against the Obligations it has with respect to any deposit account of any Subsidiary Guarantor maintained with such Lender or any other account or property of such Subsidiary Guarantor held by such Lender; provided, however, that this waiver is not intended, and shall not be deemed, to waive any right of setoff (a) any Lender has with respect to any account required to be maintained pursuant to this Agreement or any other Loan Document or (b) arising other than pursuant to this Agreement or the other Loan Documents. Notwithstanding anything to the contrary in this Section, if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.9 and, pending such payment, shall be

segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) such Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

Section 13.5. Litigation; Jurisdiction; Other Matters; Waivers.

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE COMPANY, THE PARENT, BORROWER, THE OTHER LOAN PARTIES, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LENDERS, THE ADMINISTRATIVE AGENT, THE COMPANY, THE PARENT, THE BORROWER AND EACH OTHER LOAN PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT, THE NOTES, OR ANY OTHER LOAN DOCUMENT OR ANY COLLATERAL OR ANY LIEN OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE COMPANY, THE PARENT, THE BORROWER, EACH OTHER LOAN PARTY, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS.

(b) EACH OF THE COMPANY, THE PARENT, BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL, NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE

COLLATERAL AGAINST THE COMPANY, THE PARENT, BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT OR ANY LENDER OR THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(c) EACH OF THE COMPANY, THE PARENT, THE BORROWER AND OTHER LOAN PARTIES HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE COMPANY, THE PARENT, BORROWER OR OTHER LOAN PARTY AT ITS ADDRESS FOR NOTICES PROVIDED FOR HEREIN. SHOULD THE COMPANY, THE PARENT, THE BORROWER OR OTHER LOAN PARTY FAIL TO APPEAR OR ANSWER ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THIRTY (30) DAYS AFTER THE MAILING THEREOF, THE BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST IT AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

(d) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS AND THE TERMINATION OF THIS AGREEMENT.

Section 13.6. **Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Company, the Parent, Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of the immediately following subsection (b), (ii) by way of participation in accordance with the provisions of the immediately following subsection (d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of the immediately following subsection (e) (and, subject to the last sentence of the immediately following subsection (b), any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns

permitted hereby, Participants to the extent provided in the immediately following subsection (d) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of an assigning Term Loan Lender's Term Loans at the time owing to it, or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in the immediately preceding subsection (A), the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, and the principal outstanding balance of the Term Loan subject to such assignment (in each case, as determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$1,000,000 unless each of the Administrative Agent and, so long as no Default or Event of Default shall exist, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that if, after giving effect to such assignment, the outstanding principal balance of the Loans of such assigning Lender, as applicable, would be less than \$1,000,000 in the case of a Term Loan, then such assigning Lender shall assign the entire amount of the Loans at the time owing to it.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan assigned.

(iii) Required Consents. No consent shall be required for any assignment except that the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Term Loan to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption; Notes. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$4,500 (or \$7,500 in the event that such transferor Lender is a Defaulting Lender) for each assignment (which fee the Administrative Agent may, in its sole discretion, elect to waive), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

If requested by the transferor Lender or the assignee, upon the consummation of any assignment, the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that new Notes are issued to the assignee and such transferor Lender, as appropriate.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or to any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(viii) Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender nor shall the Administrative Agent be obligated to monitor the aggregate amount of Loans held by Affiliated Lenders. Upon request by the Administrative Agent, the Borrower shall (i) promptly (and in any case, not less than five (5) Business Days (or shorter period as agreed to by the Administrative Agent) prior to the proposed effective date of any amendment, consent or waiver pursuant to Section 13.7) provide to the Administrative Agent, a complete list of all Affiliated Lenders holding Loans at such time and (ii) not less than five (5) Business Days (or shorter period as agreed to by the Administrative Agent) prior to the proposed effective date of any amendment, consent or waiver pursuant to Section 13.7, provide to the Administrative Agent, a complete list of all Affiliated Debt Funds holding Loans at such time.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to the immediately following subsection (c), from and after the effective date specified in each

Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 5.4, Section 13.2 and Section 13.10 and the other provisions of this Agreement and the other Loan Documents as provided in Section 13.11 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with the immediately following subsection (d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Principal Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to (w) [reserved], (x) extend the date fixed for the payment of principal on the Loans or portions thereof owing to such Lender, (y) reduce the rate at which interest is payable

thereon (other than a waiver of default interest) or (z) release any Guarantor or Subsidiary Grantor from its Obligations under the Guaranty or the Collateral Agreement, as the case may be, except as contemplated by Section 8.14(b), Section 8.14(c) or in accordance with its terms, as the case may be, in each case, as applicable to that portion of such Lender's rights and/or obligations that are subject to the participation. The Borrower agrees that each Participant shall be entitled to the benefits of Section 3.10, Section 5.1 and Section 5.4 (subject to the requirements and limitations therein, including the requirements under Section 3.10(g) (it being understood that the documentation required under Section 3.10(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 3.10, Section 5.1, Section 5.4 and Section 5.6 as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 3.10 or Section 5.1, with respect to any participation, than its participating Lender would have been entitled to receive. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.10, Section 5.1, Section 5.4 and Section 5.6 with respect to any Participant. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 13.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 3.3 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided, further that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.10 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.10 as though it were a Lender.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) No Registration. Each Lender agrees that, without the prior written consent of the Borrower and the Administrative Agent, it will not make any assignment hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in

respect of, any Loan or Note under the Securities Act or any other securities laws of the United States of America or of any other jurisdiction.

(g) Patriot Act Notice; Compliance. In order for the Administrative Agent to comply with “know your customer” and Anti-Money Laundering Laws, including, without limitation, the Patriot Act, prior to any Lender that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, the Administrative Agent may request, and such Lender shall provide to the Administrative Agent, its name, address, tax identification number and/or such other identification information as shall be necessary for the Administrative Agent to comply with federal law.

(h) Certain Assignments to Affiliated Lenders. Notwithstanding anything in this Agreement to the contrary (including Section 13.7), any Lender may, at any time, assign all or a portion of its Term Loans to an Affiliated Lender through open-market purchases, subject to the following limitations:

(i) In connection with an assignment to a Non-Debt Fund Affiliate, (A) the Non-Debt Fund Affiliate shall have identified itself in writing as an Affiliated Lender to the assigning Lender and the Administrative Agent prior to the execution of such assignment and (B) the Non-Debt Fund Affiliate shall be deemed to have represented and warranted to the assigning Lender, the other Lenders and the Administrative Agent that the requirements set forth in this clause (h)(i) and clause (iv) below, shall have been satisfied upon consummation of the applicable assignment;

(ii) Non-Debt Fund Affiliates will not (A) have the right to receive information, reports or other materials provided to the Lenders by the Administrative Agent or any other Lender or any other Person, except to the extent made available to the Borrower, (B) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (C) access any electronic site established for the Lenders or the Administrative Agent or confidential communications from counsel to or advisors of the Administrative Agent or any of the Lenders;

(iii) (A) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under, this Agreement or any other Loan Document, each Non-Debt Fund Affiliate will be disregarded and shall not be counted for all purposes of this Agreement and the other Loan Documents, (B) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (a “Plan”), each Non-Debt Fund Affiliate hereby agrees (x) not to vote on such Plan, (y) if such Non-Debt Fund Affiliate does vote on such Plan notwithstanding the restriction in the foregoing clause (x), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (z) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of

competent jurisdiction) effectuating the foregoing clause (y), and (C) each Non-Debt Fund Affiliate hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Non-Debt Fund Affiliate's attorney-in-fact, with full authority in the place and stead of such Non-Debt Fund Affiliate and in the name of such Non-Debt Fund Affiliate (solely in respect of Term Loans therein and not in respect of any other claim or status such Non-Debt Fund Affiliate may otherwise have), from time to time in the Administrative Agent's discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary or appropriate to carry out the provisions of this clause (iii), including to ensure that any vote of such Non-Debt Fund Affiliate (including on any Plan) is disregarded, withdrawn or otherwise not counted;

(iv) the aggregate principal amount of Term Loans held at any one time by Non-Debt Fund Affiliates may not exceed 25% of the aggregate outstanding principal amount of Term Loans (such percentage, the "**Affiliated Lender Cap**"); provided that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Loans held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void *ab initio*;

(v) no Affiliated Lender will be entitled to bring actions against the Administrative Agent or the Lenders or receive advice of counsel or other advisors to the Administrative Agent or any other Lender or challenge the attorney client privilege of their respective counsel;

(vi) the portion of any Loans held by Debt Fund Affiliates in the aggregate in excess of 49.9% of the amount of Loans and Commitments required to be held by Lenders in order for such Lenders to constitute "Requisite Lenders" or "Super-Majority Lenders" shall be disregarded in determining Requisite Lenders or "Super-Majority Lenders" at any time; and

(vii) the assigning Lender and the Affiliated Lender purchasing such Lender's Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit K hereto (an "**Affiliated Lender Assignment Agreement**").

Each Affiliated Lender that is a Lender hereunder agrees to comply with the terms of this paragraph (h) (notwithstanding that it may be granted access to the platform or any other electronic site established for the Lenders by the Administrative Agent), and agrees that in any subsequent assignment of all or any portion of its Term Loans it shall identify itself in writing to the assignee as an Affiliated Lender prior to the execution of such assignment.

Section 13.7. **Amendments and Waivers.**

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or in any Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document (other than any fee letter solely between the Borrower and the Administrative Agent) may be amended, (iii) the performance or observance by the Borrower, any other Loan Party or any other

Subsidiary of any terms of this Agreement or such other Loan Document (other than any fee letter solely between the Borrower and the Administrative Agent) may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto. Subject to the immediately following subsection (b), any term of this Agreement or of any other Loan Document relating to the rights or obligations of the Term Loan Lenders, and not any other Lenders, may be amended, and the performance or observance by the Borrower or any other Loan Party or any Subsidiary of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party a party thereto). Notwithstanding anything to the contrary set forth in this Section 13.7(a), (x) the Administrative Agent shall be authorized on behalf of all the Lenders, without the necessity of any notice to, or further consent from, any Lender, to waive the imposition of the late fees provided in Section 2.9 and (y) the Fee Letter may only be amended, and the performance or observance by any Loan Party thereunder may only be waived, in a writing executed by the parties thereto.

(b) Additional Lender Consents. In addition to the foregoing requirements, no amendment, waiver or consent shall, in each case subject to Section 13.6(h):

(i) subject a Lender to any additional obligations without the written consent of such Lender;

(ii) permit the sale of a Collateral Property for less than the applicable Minimum Release Price or amend or modify any Allocated Loan Amount or any aspect of Schedule 1.1(d), in each case without the written consent of the Super-Majority Lenders;

(iii) reduce the principal of, or interest that has accrued or the rates of interest that will be charged (subject to the last sentence of Section 13.7(c)) on the outstanding principal amount of, any Loans or other Obligations (other than a waiver of default interest) without the written consent of each Lender directly affected thereby; provided, however, only the written consent of the Requisite Lenders shall be required for the waiver of interest payable at the Post-Default Rate, retraction of the imposition of interest at the Post-Default Rate and amendment of the definition of “Post-Default Rate”;

(iv) reduce the amount of any Fees payable to a Lender without the written consent of such Lender;

(v) [reserved];

(vi) modify the definition of “Term Loan Maturity Date”, modify the amortization of the Term Loans set forth in Section 2.7(b), or otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Term Loans or for the payment of Fees or any other Obligations owing to the Term Loan Lenders, in each case, without the written consent of each Term Loan Lender;

(vii) [reserved];

(viii) modify the definition of “Pro Rata Share” or amend or otherwise modify the provisions of Section 3.2, Section 3.3 or Section 11.5 without the written consent of each Lender;

(ix) amend this Section or amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section without the written consent of each Lender;

(x) modify the definition of the term “Requisite Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof, in each case, without the written consent of each Lender;

(xi) modify the definition of the term “Super-Majority Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof, in each case, without the written consent of each Lender;

(xii) [reserved];

(xiii) release the Parent Guarantor (other than as contemplated following the Parent Guaranty Termination Date), the REIT Bad-Act Guaranty (other than as contemplated following the REIT Guaranty Termination Date) or any Subsidiary Guarantor from its obligations under, or subordinate such obligations under, the Guaranty (except as contemplated by Section 8.14(b)) without the written consent of each Lender;

(xiv) release any Subsidiary Grantor from its obligations under, or subordinate such obligations under, the Collateral Agreement (except as contemplated by Section 8.14(c)) without the written consent of each Lender;
or

(xv) release or dispose of or subordinate any Initial Collateral Property, any other Collateral Property, or all or substantially all of the value of any other Collateral unless released or disposed or subordinated of as permitted by, and in accordance with, Section 12.3, Section 12.11(b) or Section 4.2 without the written consent of each Lender.

(c) Technical Amendments. Notwithstanding anything to the contrary in this Section 13.7, if the Administrative Agent and the Borrower have jointly identified an ambiguity, omission, mistake or defect in any provision of this Agreement or an inconsistency between provisions of this Agreement, the Administrative Agent and the Borrower shall be permitted to amend such provision or provisions to cure such ambiguity, omission, mistake, defect or inconsistency so long as to do so would not adversely affect the interests of the Lenders. Any such amendment shall become effective without any further action or consent of any other party to this Agreement. Notwithstanding the foregoing, the Administrative Agent and the Borrower may, without the consent of any Lender, (x) enter into amendments or modifications to this Agreement or any of the other Loan Documents or (y) enter into additional Loan Documents, in each case, as the Administrative Agent reasonably deems appropriate in order to implement any Benchmark

Replacement or otherwise effectuate the terms of Section 5.2(b) in accordance with the terms of Section 5.2(b). The Administrative Agent shall promptly provide any such amendment under this Section 13.7(c) to the Lenders upon the effectiveness thereof.

(d) Amendment of Administrative Agent's Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents or modify Section 11.10. Notwithstanding anything to the contrary herein, no Defaulting Lender or Non-Debt Fund Affiliate shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders and Non-Debt Fund Affiliates). No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by the Borrower, any other Loan Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

Section 13.8. Non-Liability of Administrative Agent and Lenders.

The relationship between the Borrower, on the one hand, and the Lenders and the Administrative Agent, on the other hand, shall be solely that of borrower and lender. The Administrative Agent, each Lender and their Affiliates may have economic interests that conflict with those of the Company, the Parent, Loan Parties, their stockholders and partners and/or their Affiliates. Neither the Administrative Agent nor any Lender shall have any fiduciary responsibilities to the Company, the Parent, the Borrower and no provision in this Agreement or in any of the other Loan Documents, and no course of dealing between or among any of the parties hereto, shall be deemed to create any fiduciary duty owing by the Administrative Agent or any Lender to any Lender, the Company, the Parent, the Borrower, any Subsidiary or any other Loan Party. Neither the Administrative Agent, nor any Lender undertakes any responsibility to the Company, the Parent, the Borrower or any other Loan Party to review or inform the Borrower or any other Loan Party of any matter in connection with any phase of the business or operations of the Company, the Parent, the Borrower, any other Loan Party, or any of their respective Subsidiaries or Affiliates.

Section 13.9. Confidentiality.

Except as otherwise provided by Applicable Law, the Administrative Agent, and each Lender shall maintain the confidentiality of all Information (as defined below) in accordance with its customary procedure for handling confidential information of this nature and in accordance with safe and sound banking practices but in any event may make disclosure: (a) to its Affiliates

and to its and its Affiliates' other respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or proposed assignee, Participant or other transferee in connection with a potential transfer of any Loans or participation therein as permitted hereunder, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (c) as required or requested by any Governmental Authority or representative thereof or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law; (d) to the Administrative Agent's or such Lender's independent auditors and other professional advisors (provided they shall be notified of the confidential nature of the information); (e) in connection with the exercise of any remedies under any Loan Document or any action or proceeding relating to any Loan Document or the enforcement of rights hereunder or thereunder; (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section actually known by the Administrative Agent or such Lender to be a breach of this Section or (ii) becomes available to the Administrative Agent any Lender or any Affiliate of the Administrative Agent or any Lender on a non-confidential basis from a source other than the Borrower or any Affiliate of the Borrower; (g) to the extent requested by, or required to be disclosed to, any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over such Person or its Related Parties; (h) of deal terms and other information customarily reported to Thomson Reuters, other bank market data collectors and similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of the Loan Documents; (i) to any other party hereto; (j) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loan Documents; (k) for purposes of establishing a "due diligence" defense; and (l) with the consent of the Borrower. Notwithstanding the foregoing, the Administrative Agent and each Lender may disclose any such confidential information, without notice to the Borrower or any other Loan Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent or such Lender or in accordance with the regulatory compliance policy of the Administrative Agent or such Lender. As used in this Section, the term "Information" means all information received from the Borrower, any other Loan Party, any other Subsidiary or Affiliate relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrower, any other Loan Party, any other Subsidiary or any Affiliate, provided that, in the case of any such information received from the Borrower, any other Loan Party, any other Subsidiary or any Affiliate after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 13.10. **Indemnification.**

(a) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person

being called an “**Indemnified Party**”) against, and hold each Indemnified Party harmless from, and shall pay or reimburse any such Indemnified Party for, any and all of the following (collectively, the “**Indemnified Costs**”): losses, claims (including, without limitation, Environmental Claims), damages, liabilities and related expenses (including, without limitation, the fees, charges and disbursements of any counsel for any Indemnified Party (which counsel may be employees of any Indemnified Party)), incurred by any Indemnified Party or asserted against any Indemnified Party by any Person (including the Borrower, any other Loan Party or any other Subsidiary) other than such Indemnified Party and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower, any other Loan Party or any other Subsidiary, or any Environmental Claim related in any way to the Borrower, any other Loan Party or any other Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, any other Loan Party or any other Subsidiary, and regardless of whether any Indemnified Party is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims or claims or liabilities with respect to or resulting from any delay in the payment or omission to pay any taxes, fees or charges, which may be payable or determined to be payable in connection with the execution, delivery, recording, performance or enforcement of this Agreement, the Notes and any of the other Loan Documents or the perfection of any rights or Liens under this Agreement, the Notes or any of the other Loan Documents to the extent that Borrower is obligated to pay such taxes, fees or charges under this Agreement and the delay or omission to make such payment is the fault of Borrower), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including, without limitation, reasonable attorneys and consultant’s fees (any claim, investigation, litigation or other proceeding of the type described in clauses (iv) or (v) referred to herein as an “**Indemnity Proceeding**”); provided, however, that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party. This Section 13.10(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) If and to the extent that the obligations of the Borrower under this Section are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under Applicable Law.

(c) Subject to the immediately following Section 13.11, the Borrower’s obligations under this Section shall survive any termination of this Agreement and the other Loan Documents and the payment in full in cash of the Obligations, and are in addition to, and not in

substitution of, any of the other obligations set forth in this Agreement or any other Loan Document to which it is a party.

(d) This indemnification shall apply to any Indemnity Proceeding arising during the pendency of any bankruptcy proceeding filed by or against the Borrower and/or any Subsidiary.

(e) All out-of-pocket fees and expenses of, and all amounts paid to third-persons by, an Indemnified Party shall be advanced by the Borrower at the request of such Indemnified Party notwithstanding any claim or assertion by the Borrower that such Indemnified Party is not entitled to indemnification hereunder upon receipt of an undertaking by such Indemnified Party that such Indemnified Party will reimburse the Borrower if it is actually and finally determined in a non-appealable judgment by a court of competent jurisdiction that such Indemnified Party is not so entitled to indemnification hereunder. Each Indemnified Party shall use its reasonable efforts to give the Borrower as much advance notice of anticipated fees, expenses and costs as is reasonably practicable under the circumstances, but failure to give such notice shall not absolve the Borrower of the Borrower's obligation to pay the same.

(f) An Indemnified Party may conduct its own investigation and defense of, and may formulate its own strategy with respect to, any Indemnity Proceeding covered by this Section and, as provided above, all Indemnified Costs incurred by such Indemnified Party shall be reimbursed by the Borrower. No action taken by legal counsel chosen by an Indemnified Party in investigating or defending against any such Indemnity Proceeding shall vitiate or in any way impair the obligations and duties of the Borrower hereunder to indemnify and hold harmless each such Indemnified Party; provided, however, that (i) if the Borrower is required to indemnify an Indemnified Party pursuant hereto and (ii) the Borrower has provided evidence reasonably satisfactory to such Indemnified Party that the Borrower has the financial wherewithal to reimburse such Indemnified Party for any amount paid by such Indemnified Party with respect to such Indemnity Proceeding, such Indemnified Party shall not settle or compromise any such Indemnity Proceeding without the prior written consent of the Borrower (which consent shall not be unreasonably withheld or delayed). Notwithstanding the foregoing, an Indemnified Party may settle or compromise any such Indemnity Proceeding without the prior written consent of the Borrower where (x) no monetary relief is sought against such Indemnified Party in such Indemnity Proceeding or (y) there is an allegation of a violation of law by such Indemnified Party.

Section 13.11. **Termination; Survival.**

This Agreement shall terminate at such time as (a) none of the Lenders is obligated any longer under this Agreement to make any Loans and (b) all Obligations (other than obligations which survive as provided in the following sentence) have been paid and satisfied in full. The indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of Sections 3.10, 5.1, 5.4, 12.8, 13.2 and 13.10 and any other provision of this Agreement and the other Loan Documents, and the provisions of Section 13.5, shall continue in full force and effect and shall protect the Administrative Agent and the Lenders (i) notwithstanding any termination of this Agreement, or of the other Loan Documents, against events arising after such termination as well as before and (ii) at all times after any such party ceases to be a party to this Agreement with respect to all matters and events existing on or prior to the date such party ceased to be a party to this Agreement.

Section 13.12. **Severability of Provisions.**

If any provision under this Agreement or the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed severed from the Loan Documents, and the validity, legality and enforceability of the remaining provisions shall remain in full force as though the invalid, illegal, or unenforceable provision had never been part of the Loan Documents.

Section 13.13. **GOVERNING LAW.**

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 13.14. **Counterparts.**

(a) To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile, in portable document format (“PDF”) or other similar electronic means). It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

(b) The words “execute,” “execution,” “signed,” “signature,” “delivery” and words of like import in or related to this Agreement, any other Loan Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Loan Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept such

Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and any of the Loan Parties, electronic images of this Agreement or any other Loan Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (B) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

Section 13.15. Obligations with Respect to Loan Parties and Subsidiaries.

The obligations of the Borrower to direct or prohibit the taking of certain actions by the Company, the Parent, the other Loan Parties and Subsidiaries as specified herein shall be absolute and not subject to any defense the Borrower may have that the Borrower does not control the Company, the Parent, such Loan Parties or Subsidiaries.

Section 13.16. Independence of Covenants.

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

Section 13.17. Limitation of Liability.

None of the Administrative Agent, any Lender, or any of their respective Related Parties shall have any liability with respect to, and the Company, the Parent, the Borrower and each Loan Party hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, consequential or punitive damages suffered or incurred by the Company, the Parent, the Borrower or any such Loan Party in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

Section 13.18. Entire Agreement.

This Agreement, the Notes and the other Loan Documents embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. To the extent any term of this Agreement is inconsistent with a term of any other Loan Document to which the parties of this Agreement are party, the term of this Agreement shall control to the extent of such inconsistency. There are no oral agreements among the parties hereto.

Section 13.19. Construction.

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

Section 13.20. Headings.

The paragraph and section headings in this Agreement are provided for convenience of reference only and shall not affect its construction or interpretation.

Section 13.21. [Reserved].

Section 13.22. Limited Nature of Parent's and Company's Obligations.

WITHOUT LIMITING ONGOING REPORTING OBLIGATIONS OF THE PARENT OR THE COMPANY IN ARTICLE IX OR THE VARIOUS DEFAULTS IN ARTICLE XI WHICH COULD RESULT FROM ACTIONS BY OR IMPACTING THE PARENT OR THE COMPANY, THE LENDERS AND THE ADMINISTRATIVE AGENT ACKNOWLEDGE AND AGREE THAT THE PARENT AND THE COMPANY, ARE INDIVIDUALLY JOINING IN THE EXECUTION OF THIS AGREEMENT SOLELY FOR THE LIMITED PURPOSE OF BEING BOUND BY THE TERMS OF THE SECTIONS SPECIFICALLY APPLICABLE TO THE PARENT OR THE COMPANY, LIMITED TO SECTIONS 8.1, 8.2, 8.7, AND 8.10 OF THIS AGREEMENT. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE OCCURRENCE OF ANY DEFAULT OR EVENT OF DEFAULT UNDER THIS AGREEMENT OR OTHER LOAN DOCUMENT RESULTING FROM A BREACH BY THE PARENT OR THE COMPANY, AS APPLICABLE, OF, OR A MISREPRESENTATION BY THE PARENT OR THE COMPANY, AS APPLICABLE, UNDER OR IN ANY WAY RELATING TO, ANY OF SUCH SECTIONS SHALL NOT CREATE ANY PERSONAL LIABILITY ON THE PART OF THE PARENT OR THE COMPANY, AS APPLICABLE FOR THE PAYMENT OF THE OBLIGATIONS. NOTHING CONTAINED IN THIS SECTION IS INTENDED TO LIMIT THE OBLIGATIONS OF THE PARENT UNDER THE PARENT GUARANTY OR THE COMPANY UNDER THE REIT BAD-ACT GUARANTY. THE LENDERS AND THE ADMINISTRATIVE AGENT FURTHER ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF THIS AGREEMENT IN ARTICLE VIII, WHICH ARE SPECIFICALLY REFERENCED ABOVE, SHALL NO LONGER BIND THE COMPANY OR THE PARENT ON AND AFTER THE REIT BAD-ACT GUARANTY TERMINATION DATE OR THE PARENT GUARANTY TERMINATION DATE, RESPECTIVELY.

Section 13.23. Limitation of Liability of Borrower's Directors, Officers, Etc.

The parties hereto acknowledge and agree that no director, officer, shareholder, employee or agent of the Borrower or any Affiliate of the Borrower shall be held to any personal liability, jointly or severally, for any obligation of, or claim against, the Borrower.

Section 13.24. **Acknowledgement and Consent to Bail-In of Affected Financial Institutions.**

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

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

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

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

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 13.25. **Amendment and Restatement.**

This Agreement shall be deemed to amend and restate the Existing Credit Agreement in its entirety, and all of the terms and provisions hereof shall supersede the terms and conditions thereof. The parties hereto further agree that this Agreement and the Loans shall serve to extend, renew and continue, but not to extinguish or novate, the Loans under the Existing Credit Agreement and the corresponding promissory notes and to amend, restate and supersede, but not to extinguish or cause to be novated the Obligations under, the Existing Credit Agreement. The Borrower hereby agrees that, upon the effectiveness of this Agreement, the “Loans” made and outstanding under the Existing Credit Agreement shall be deemed to be Loans outstanding under and payable by this Agreement.

Section 13.26. **Reversal of Payments.**

To the extent any Loan Party makes a payment or payments to the Administrative Agent for the ratable benefit of any of the Lenders or to any Lender directly or the Administrative Agent or any Lender receives any payment or proceeds of the Collateral or any Loan Party exercises its right of setoff, which payments or proceeds (including any proceeds of such setoff) or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or

required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent, and each Lender severally agrees to pay to the Administrative Agent upon demand its (or its applicable Affiliate's) applicable ratable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent plus interest thereon at a per annum rate equal to the Federal Funds Rate from the date of such demand to the date such payment is made to the Administrative Agent

Section 13.27. **Injunctive Relief.**

The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 13.28. **Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivative Contracts or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and, each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 13.28, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[SIGNATURE PAGES FOLLOW]

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

BORROWER:

CBL & ASSOCIATES HOLDCO I, LLC

By: CBL & Associates Limited Partnership,
[its sole member]

By: CBL Holdings I, Inc.,
its sole general partner

By: _____
Name: _____
Its: _____

PARENT:

Solely for the limited purposes set forth in Section 13.22.

CBL & ASSOCIATES LIMITED PARTNERSHIP

By: CBL Holdings I, Inc.,
its sole general partner

By: _____
Name: _____
Its: _____

COMPANY:

Solely for the limited purposes set forth in Section 13.22.

CBL & ASSOCIATES PROPERTIES, INC.

By: _____
Name: _____
Its: _____

*Signature Page to
Amended and Restated Credit Agreement*

WELLS FARGO BANK, NATIONAL ASSOCIATION, as
Administrative Agent and as a Lender

By: _____
Name:
Title:

*Signature Page to
Amended and Restated Credit Agreement*

[OTHER LENDERS], as a Lender

By:

Name:

Title:

*Signature Page to
Amended and Restated Credit Agreement*

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SCHEDULE I

Term Loan Commitments

Term Loan Lender	Term Loan Commitment
Wells Fargo Bank, National Association	\$[•]
U.S. Bank National Association	\$[•]
Citizens Bank, N.A.	\$[•]
PNC Bank, National Association	\$[•]
JPMorgan Chase Bank, N.A.	\$[•]
Regions Bank	\$[•]
First Horizon Bank National Association	\$[•]
Branch Banking and Trust Company	\$[•]
Bank of America, N.A.	\$[•]
Associated Bank, National Association	\$[•]
MidFirst Bank	\$[•]
Goldman Sachs Lending Partners LLC	\$[•]
TD Bank, N.A.	\$[•]
Synovus Bank	\$[•]
Trustmark National Bank	\$[•]
Hancock Whitney Bank	\$[•]
TOTAL	\$883,700,000

Schedule I-1

SCHEDULE 1.1(b)

Liens³

None.

³ CBL to update.

Schedule 1.1(b)-1

SCHEDULE 1.1(c)

Required Collateral Properties

1. Hanes Mall
2. Mall Del Norte and Mall Del Norte Cinemark
3. Sunrise Mall
4. West Towne Mall

SCHEDULE 1.1(d)

Collateral Properties
Allocated Loan Amount Release Price

Collateral Property Name	Allocated Loan Amounts	Release Percentage	Minimum Release Price
1. Cherryvale Mall	\$27,309,439.78	115%	\$31,405,855.74
2. East Towne Mall	\$17,344,156.74	115%	\$19,945,780.25
3. Frontier Mall	\$15,214,172.58	115%	\$17,496,298.46
4. Hanes Mall (1)	\$73,028,028.37	120%	\$87,633,634.05
5. Imperial Valley Mall	\$35,753,305.56	115%	\$41,116,301.39
6. Kirkwood Mall	\$44,881,809.10	120%	\$53,858,170.92
7. Layton Hills Mall	\$23,581,967.50	115%	\$27,119,262.62
8. Layton Hills Mall - Convenience Center	\$8,139,582.33	115%	\$9,360,519.68
9. Layton Hills Mall - Outparcels	\$3,803,543.14	115%	\$4,374,074.62
10. Layton Hills Mall - Plaza	\$3,217,797.50	115%	\$3,700,467.13
11. Mall Del Norte and Mall Del Norte Cinemark (1)	\$100,261,397.29	120%	\$120,313,676.74
12. Mayfaire Town Center	\$61,313,115.49	120%	\$73,575,738.59
13. Northgate Mall	\$15,404,349.73	115%	\$17,715,002.20
14. Pearland Town Center, Office, and HCA Medical	\$93,338,948.76	120%	\$112,006,738.52
15. Post Oak Mall / Post Oak Mall III	\$32,862,612.77	115%	\$37,792,004.68
16. Richland Mall	\$32,862,612.77	115%	\$37,792,004.68
17. Southaven Towne Center / Shoppes at Southaven Towne Center	\$26,776,943.74	115%	\$30,793,485.30
18. Sunrise Mall (1)	\$72,875,886.65	120%	\$87,451,063.98
19. Turtle Creek Mall	\$23,049,471.46	115%	\$26,506,892.17
20. Valley View Mall	\$43,360,391.85	115%	\$49,864,450.62
21. West Towne Mall (1)	\$65,192,729.50	120%	\$78,231,275.39
22. Westmoreland Mall / Westmoreland Crossing	\$64,127,737.41	120%	\$76,953,284.90
Total	\$883,700,000.00		\$1,045,005,982.63

(1) Required Collateral Properties

SCHEDULE 4.1(a)

Initial Collateral Properties

(1) Existing Collateral Properties

1. Cherryvale Mall
2. East Towne Mall
3. Frontier Mall
4. Hanes Mall
5. Imperial Valley Mall
6. Kirkwood Mall
7. Layton Hills Mall
8. Layton Hills Convenience Center
9. Layton Hills Cinemark
10. Layton Hills Plaza
11. Mall Del Norte and Mall Del Norte Cinemark
12. Mayfaire Towne Center
13. Northgate Mall
14. Pearland Town Center, Office, and HCA Medical
15. Post Oak Mall / Post Oak Mall III
16. Richland Mall
17. Sunrise Mall
18. Turtle Creek Mall
19. West Towne Mall
20. Westmoreland Mall / Westmoreland Crossing

(2) Additional Collateral Properties

1. Southaven Towne Center / Shoppes at Southaven Towne Center
2. Valley View Mall

SCHEDULE 4.1(b)

Collateral Property Diligence

An executive summary of the Property including, at a minimum, the following information relating to such Property: (a) a description of such Property, such description to include the age, location, site plan, current occupancy rate and physical condition of such Property; (b) the purchase price paid or to be paid for such Property; (c) the current and projected condition of the regional market and specific submarket in which such Property is located; (d) the current projected capital plans and, if applicable, current renovation plans for such Property; and (e) updated financial projections for the Borrower's consolidated operations and for such Property;

An operating statement for such Property audited or certified by a representative of the Borrower as being true and correct in all material respects and prepared in accordance with GAAP for the previous three (3) fiscal years; provided that, with respect to any period during which such Property was owned by the Borrower or a Subsidiary of the Borrower for less than three (3) years, such information shall only be required to be delivered to the extent reasonably available to the Borrower and such certification may be based upon the best of the Borrower's knowledge; provided, further, that if such Property has been operating for less than three (3) years, the Borrower shall provide such projections and other information concerning the anticipated operation of such Property as the Administrative Agent may reasonably request;

A copy of a recent ALTA Owner's Policy of Title Insurance ("**Owner's Policy**") covering such Property showing the identity of the fee titleholder thereto and all matters of record, which shall be issued by a Title Insurance Company;

A Security Deed or an amendment to an existing Security Deed for such Property;

A Title Policy (or an agreed-upon endorsement to an existing Title Policy) for such Property insuring the applicable Security Deed;

An opinion of counsel in the state in which such Property is located in form and substance and from counsel reasonably satisfactory to the Administrative Agent;

Copies of all documents of record reflected in Schedule A and Schedule B of the Owner's Policy and a copy of the most recent real estate tax bill and notice of assessment;

With respect to the Additional Collateral Properties, a current or currently certified survey of such Property certified by a surveyor licensed in the applicable jurisdiction to have been prepared in accordance with the then effective Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, provided that surveys provided in connection with the Existing Credit Agreement shall be acceptable with respect to Initial Collateral Properties;

Receipt of a completed standard flood hazard determination for such Property and if such Property is located in a FEMA-designated special flood hazard area, evidence of the Borrower's receipt of required notices and adequate flood insurance;

An Appraisal for such Property;

A “Phase I” environmental assessment of such Property not more than twelve (12) months old, which report (a) has been prepared by an environmental engineering firm acceptable to the Administrative Agent and (b) complies with the requirements contained in the Administrative Agent’s guidelines adopted from time to time by the Administrative Agent to be used in its lending practice generally and any other environmental assessments or other reports relating to such Property, including any “Phase II” environmental assessment prepared or recommended by such environmental engineering firm to be prepared for such Property;

A property condition report for each Additional Collateral Property prepared by a firm or firms acceptable to the Administrative Agent;

To the extent requested by the Administrative Agent in its reasonable discretion, seismic reports and such other reports as are usual and customary for similar credit facilities or similar properties, in each case, commissioned by the Administrative Agent in the name of the Administrative Agent, its successors and assigns;

Final certificates of occupancy and any other Governmental Approvals relating to Additional Collateral Property;

A property zoning report indicating that each Additional Collateral Property complies with applicable zoning and land use laws;

Copies of (a) all Property Management Agreements relating to the use, occupancy, operation, maintenance, enjoyment or ownership of such Property, if any, (b) all Tenant Leases with respect to such Property (or, if acceptable to the Administrative Agent, a summary of the terms thereof), and (c) any other franchises, leases or material operating agreements with respect to such Property;

UCC, tax, judgment, litigation, bankruptcy and lien search reports with respect to the Borrower (or the relevant Subsidiary if such Property is owned by a Subsidiary) and such Property in all necessary or appropriate jurisdictions indicating that there are no Liens of record on such Property other than Permitted Liens;

Plans and specifications for such Property, provided the same shall only be required to the extent reasonably available to the Borrower;

Copies of any applicable Ground Leases and estoppels from ground lessors for such Property;

Copies of documentation regarding any other encumbrances over such Property securing amounts greater than \$25,000 (as such amount may be increased from time to time by the Administrative Agent in its reasonable discretion), including REAs (and receipt of satisfactory REA estoppels) and leases (including tenant estoppels from tenants covering space equal to 60% of such Property’s square footage requirement), and, to the extent determined by the Administrative Agent, SNDAs, easements, and any other related information as the Administrative Agent may reasonably request;

Inspection of the Properties by the Administrative Agent and its engineers and consultants;

Copies of all policies of insurance required by Section 8.5, including, without limitation, such evidence of flood insurance coverage (including contents coverage, as applicable) as the Administrative Agent shall reasonably require; and

Such other information reasonably deemed necessary by the Administrative Agent (including any supplements to the Schedules hereto with respect to such Property reasonably acceptable to the Administrative Agent).

Sch. 4.1(b) - 3

SCHEDULE 7.1(b)

Ownership Structure

Part I

Loan Parties and Equity Interests

CBL & ASSOCIATES HOLDCO I, LLC (Delaware)

CBL & Associates Limited Partnership

CBL Holdings I, Inc. - 1% general partnership interest

CBL & Associates Properties, Inc. - 100% common stock

CBL Holdings II, Inc. - 97.5% limited partnership interest

CBL & Associates Properties, Inc. - 100% common stock

***Each of the below listed Subsidiaries of Borrower is a Grantor Subsidiary, and by definition, also a Guarantor Subsidiary**

CBL RM-Waco, LLC (Texas)

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL SM-Brownsville, LLC (Texas)

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL/Westmoreland, L.P. (Pennsylvania)

CBL/Westmoreland I, LLC - 50% general partnership interest

CBL & Associates HoldCo I, LL - 100% membership interest

CBL/Westmoreland II, LLC - 50% limited partnership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL/Westmoreland I, LLC (Delaware)

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL/Westmoreland II, LLC (Pennsylvania)

CBL & Associates HoldCo I, LLC - 100% membership interest

Cherryvale Mall, LLC (Delaware)

CBL & Associates HoldCo I, LLC - 100% membership interest

Frontier Mall Associates Limited Partnership (Wyoming)

CBL & Associates HoldCo I, LLC - 99.9% general partnership interest

Frontier Mall II, LLC - .1% limited partnership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

Frontier Mall II, LLC (Wyoming)

CBL & Associates HoldCo I, LLC - 100% membership interest

Hixson Mall, LLC (Tennessee)

CBL & Associates HoldCo I, LLC - 100% membership interest

Imperial Valley Mall GP, LLC (Delaware)

CBL & Associates HoldCo I, LLC - 100% membership interest

Imperial Valley Mall II, L.P. (California)

Imperial Valley Mall GP, LLC– 0.5 % general partnership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL & Associates HoldCo I, LLC – 99.5% limited partnership interest

JG Winston-Salem, LLC (Ohio)

CBL & Associates HoldCo I, LLC - 100% membership interest

Kirkwood Mall Acquisition LLC (Delaware)

CBL & Associates HoldCo I, LLC - 100% membership interest

Layton Hills Mall CMBS, LLC (Delaware)

CBL & Associates HoldCo I, LLC - 100% membership interest

Madison Malls Ground, LLC (Wisconsin) –

CBL & Associates HoldCo I, LLC - 100% membership interest

Madison/East Towne, LLC (Delaware)

Madison Malls Ground, LLC - 100% membership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

Madison/West Towne, LLC (Delaware)

Madison Malls Ground, LLC - 100% membership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

Mall Del Norte, LLC (Texas)

CBL & Associates HoldCo I, LLC - 100% membership interest

Mayfaire GP, LLC (Delaware)

CBL & Associates HoldCo I, LLC - 100% membership interest

Mayfaire Town Center, LP (Delaware)

Mayfaire GP, LLC– 1% general partnership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL & Associates HoldCo I, LLC – 99% limited partnership interest

Pearland Ground, LLC (Texas)

Pearland Town Center Limited Partnership - 100% membership interest

Pearland Town Center GP, LLC – 0.5% general partnership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL & Associates HoldCo I, LLC – 99.5% limited partnership interest

Pearland Town Center GP, LLC (Delaware)

CBL & Associates HoldCo I, LLC - 100% membership interest

Pearland Town Center Limited Partnership (Texas)

Pearland Town Center GP, LLC – 0.5% general partnership interest

CBL & Associates HoldCo I, LLC - 100% membership interest

CBL & Associates HoldCo I, LLC – 99.5% limited partnership interest

POM-College Station, LLC (Texas)

CBL & Associates HoldCo I, LLC – 100% membership interest

Southaven Towne Center II, LLC (Delaware)

CBL & Associates HoldCo I, LLC – 100% membership interest

Turtle Creek GP, LLC (Mississippi)

CBL & Associates HoldCo I, LLC – 100% membership interest

Turtle Creek Limited Partnership (Mississippi)

CBL & Associates HoldCo I, LLC - 99.9% general partnership interest

Turtle Creek GP, LLC - .1% limited partnership interest

CBL & Associates HoldCo I, LLC – 100% membership interest

Valley View Mall SPE, LLC (Delaware)

CBL & Associates HoldCo I, LLC – 100% membership interest

SCHEDULE 7.1(b)

Ownership Structure

Part II

Collateral Properties and Owners

*EACH OWNER LISTED BELOW IS 100% DIRECTLY OR INDIRECTLY OWNED BY
BORROWER

<u>Collateral Property</u>	<u>Owner (State of Formation)</u>
Richland Mall	CBL RM-Waco, LLC, a Texas limited liability company
Sunrise Mall	CBL SM-Brownsville, LLC, a Texas limited liability company
Westmoreland Mall	CBL/Westmoreland, L.P., a Pennsylvania limited partnership
Westmoreland Crossing	CBL/Westmoreland, L.P., a Pennsylvania limited partnership
Cherryvale Mall	Cherryvale Mall, LLC, a Delaware limited liability company
Frontier Mall	Frontier Mall Associates Limited Partnership, a Wyoming limited partnership
Northgate Mall	Hixson Mall, LLC, a Tennessee limited liability company
Imperial Valley Mall	Imperial Valley Mall II, L.P., a California limited partnership
Hanes Mall	JG Winston-Salem, LLC, an Ohio limited liability company
Kirkwood Mall	Kirkwood Mall Acquisition LLC, a Delaware limited liability company
Layton Hills Mall	Layton Hills Mall CMBS, LLC, a Delaware limited liability company
Layton Hills Convenience Center	Layton Hills Mall CMBS, LLC, a Delaware limited liability company
Layton Hills Cinemark	Layton Hills Mall CMBS, LLC, a Delaware limited liability company
Layton Hills Plaza	Layton Hills Mall CMBS, LLC, a Delaware limited liability company
East Towne Mall (Leasehold)	Madison/East Towne, LLC, a Delaware limited liability company
East Towne Mall	Madison Malls Ground, LLC, a Wisconsin limited liability company
West Towne Mall (Leasehold)	Madison/West Towne, LLC, a Delaware limited liability company

Collateral Property**Owner (State of Formation)**

West Towne Mall	Madison Malls Ground, LLC, a Wisconsin limited liability company
Mall Del Norte (including Cinema)	Mall Del Norte, LLC, a Texas limited liability company
Mayfaire Town Center	Mayfaire Town Center, LP, a Delaware limited partnership
Pearland Town Center (Leasehold)	Pearland Ground, LLC, a Texas limited liability company
Pearland Town Center	Pearland Town Center Limited Partnership, a Texas limited partnership
Post Oak Mall / Post Oak Mall III	POM-College Station, LLC, a Texas limited liability company
Southaven Towne Center	Southaven Towne Center II, LLC, a Delaware limited liability company
Southaven Towne Center – Self Development	Southaven Towne Center II, LLC, a Delaware limited liability company
Turtle Creek Mall	Turtle Creek Limited Partnership, a Mississippi limited partnership
Valley View Mall	Valley View Mall SPE, LLC, a Delaware limited liability company

Sch. 7.1(b) - 8

SCHEDULE 7.1(f)

Occupancy Status of Properties

IF A LOAN PARTY IS NOT LISTED, IT HAS NO
COLLATERAL PROPERTY TITLED IN ITS NAME

<u>Loan Party</u>	<u>Real Estate Asset</u>	<u>Occupancy Rate</u>
CBL RM-Waco, LLC	Richland Mall	%
CBL SM-Brownsville, LLC	Sunrise Mall	%
CBL/Westmoreland, L.P.	Westmoreland Mall	%
CBL/Westmoreland, L.P.	Westmoreland Crossing	%
Cherryvale Mall, LLC	Cherryvale Mall	%
Frontier Mall Associates Limited Partnership	Frontier Mall	%
Hixson Mall, LLC	Northgate Mall	%
Imperial Valley Mall II, L.P.	Imperial Valley Mall	%
JG Winston-Salem, LLC	Hanes Mall	%
Kirkwood Mall Acquisition LLC	Kirkwood Mall	%
Layton Hills Mall CMBS, LLC	Layton Hills Mall	%
Layton Hills Mall CMBS, LLC	Layton Hills Convenience Center	%
Layton Hills Mall CMBS, LLC	Layton Hills Cinemark*	
Layton Hills Mall CMBS, LLC	Layton Hills Plaza	%
Madison Malls Ground, LLC	Fee Ownership as Ground Lessor in East Towne Mall and West Towne Mall	
Madison/East Towne, LLC	Leasehold in East Towne Mall	%
Madison/West Towne, LLC	Leasehold in West Towne Mall	%
Mall Del Norte, LLC	Mall Del Norte (including Cinema)	%
Mayfaire Town Center, LP	Mayfaire Town Center	%
Pearland Town Center Limited Partnership	Pearland Town Center	%
Pearland Ground, LLC	Pearland Town Center (Leasehold Interest in 4.0515 acres)	**
POM-College Station, LLC	Post Oak Mall / Post Oak Mall III	%
Southaven Towne Center II, LLC	Southaven Towne Center	%

Loan Party

Southaven Towne Center II, LLC
Turtle Creek Limited Partnership
Valley View Mall SPE, LLC

Real Estate Asset

Southaven Towne Center – Self Development
Turtle Creek Mall
Valley View Mall

Occupancy Rate

%
%
%

*Occupancy rate for Layton Hills Cinemark is included in the occupancy rate for Layton Hills Mall.

**Only includes the office component under the ground lease. The retail component is included in the occupancy rate for Pearland Town Center owned by Pearland Town Center Limited Partnership

Sch. 7.1(f) - 2

SCHEDULE 7.1(h)

Material Contracts⁴

Frontier Mall -

Net Out Agreement dated June 1, 1982, by and between CBL & Associates, Inc. (predecessor to Frontier Mall Associates Limited Partnership and PCW Associates), as amended by that certain First Amendment to Management and Net Out Agreement dated as of May 1, 2001, and that certain Second Amendment to Management and Net Out Agreement dated as of June 26, 2017 (pertains to the J.C. Penney parcel)

⁴ CBL to update.

SCHEDULE 7.1(i)

Litigation⁵

None.

⁵ CBL to update.

Sch. 7.1(i) - 1

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SCHEDULE 7.1(r)

Affiliate Transactions⁶

None.

⁶ CBL to update.

Sch. 7.1(r) - 1

WEIL:\97889917\58\32626.0004

SCHEDULE 7.1(cc)(vii)

Flood Zones⁷

None.

⁷ CBL to update.

Sch. 7.1(cc)(vii) - 1

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EXHIBIT A⁸

[FORM OF] ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]⁹ Assignor identified in item 1 below ([the][each, an] “**Assignor**”) and [the][each]¹⁰ Assignee identified in item 2 below ([the][each, an] “**Assignee**”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]¹¹ hereunder are several and not joint.]¹² Capitalized terms used but not defined herein shall have the meanings given to them in the Amended and Restated Credit Agreement identified below (as amended, restated, supplemented, or otherwise modified from time to time, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities), and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii)

⁸ This loan document remains subject to negotiation, revision, and approval of the Company, the Required Consenting Bank Lenders, and the Required Consenting Noteholders (as defined in the Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications), dated August 9, 2021 (Docket No. 1369).

⁹ For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

¹⁰ For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

¹¹ Select as appropriate.

¹² Include bracketed language if there are either multiple Assignors or multiple Assignees.

above being referred to herein collectively as [the][an] “**Assigned Interest**”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

- 1. Assignor[s]: _____
- 2. Assignee[s]: _____

[Assignee is an [Affiliate][Approved Fund] of [identify Lender]

- 3. Borrower: CBL & Associates Holdco I, LLC
- 4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Amended and Restated Credit Agreement
The Amended and Restated Credit Agreement dated as of [____], 2021 among CBL & Associates Holdco I, LLC, CBL & Associates Properties, Inc., solely for the limited purposes set forth therein, CBL & Associates Limited Partnership, solely for the limited purposes set forth therein, the Lenders parties thereto, Wells Fargo Bank, National Association, as Administrative Agent, and the other agents parties thereto
- 5. Credit Agreement:

Assigned Interests:

Assignor[s] ¹³	Assignee[s] ¹⁴	Aggregate Amount of Loans for all Lenders ¹⁵	Amount of Loans Assigned ⁸	Percentage Assigned of Loans ¹⁶	CUSIP Number
		\$	\$	0/ %	
		\$	\$	0/ %	
		\$	\$	0/ %	

[7. Trade Date: _____] ¹⁷

¹³ List each Assignor, as appropriate.
¹⁴ List each Assignor, as appropriate.
¹⁵ Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
¹⁶ Set forth, to at least 9 decimals, as a percentage of the Loans of all Lenders thereunder.
¹⁷ To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S]¹⁸
[NAME OF ASSIGNOR]

By: _____
Title: _____

[NAME OF ASSIGNOR]

By: _____
Title: _____

ASSIGNEE[S]¹⁹
[NAME OF ASSIGNEE]

By: _____
Title: _____

[NAME OF ASSIGNEE]

By: _____
Title: _____

[Consented to and]²⁰ Accepted:

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Administrative Agent

By: _____
Title: _____

¹⁸ Add additional signature blocks as needed.

¹⁹ Add additional signature blocks as needed.

²⁰ To be added only if the consent of the Administrative Agent is required by the terms of the Amended and Restated Credit Agreement.

[Consented to:]²¹

[NAME OF RELEVANT PARTY]

By: _____
Title:

²¹ To be added only if the consent of the Borrower is required by the terms of the Amended and Restated Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignors. [The] [Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, the Parent, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, the Parent, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 13.6 of the Credit Agreement (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 9.1 and Section 9.2 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with

their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignee whether such amounts have accrued prior to, on or after the Effective Date specified for this Assignment and Assumption. The Assignor[s] and the Assignee[s] shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to such Effective Date or with respect to the making of this assignment directly between themselves.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B

[FORM OF] AMENDED AND RESTATED GUARANTY

THIS AMENDED AND RESTATED GUARANTY (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “**Guaranty**”) is made as of [] 2021 by and among each of the Subsidiaries of CBL & Associates Holdco I, LLC (the “**Borrower**”) listed on the signature pages hereto (collectively, the “**Initial Guarantors**” and each an “**Initial Guarantor**”) and those additional Subsidiaries of the Borrower which become parties to this Guaranty by executing a supplement hereto (a “**Guaranty Supplement**”) in the form attached hereto as Annex I (such additional Subsidiaries, together with the Initial Guarantors, the “**Guarantors**”), in favor of Wells Fargo Bank, National Association, as Administrative Agent (the “**Administrative Agent**”), for its benefit and for the benefit of the Lenders under the Credit Agreement described below (the Administrative Agent and the Lenders, each individually a “**Guaranteed Party**” and collectively, the “**Guaranteed Parties**”). Unless otherwise defined herein, capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

WITNESSETH:

WHEREAS, CBL & Associates Limited Partnership (the “**Parent**”) entered into that certain Credit Agreement, dated as of January 30, 2019 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “**Existing Credit Agreement**”), among the Parent, as borrower, CBL & Associates Properties, Inc. (the “**Company**”), the financial institutions party thereto and Wells Fargo Bank, National Association, as administrative agent.

WHEREAS, to guarantee, among other things, the Obligations (as defined in the Existing Credit Agreement), certain guarantors of the Parent executed and delivered in favor of the Administrative Agent that certain Guaranty dated as of [], 2019 (as amended and in effect on the date hereof, the “**Existing Guaranty**”).

WHEREAS, the Existing Credit Agreement is being amended and restated in its entirety pursuant to that certain Amended and Restated Credit Agreement dated as of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) by and among the Borrower, the Parent, solely for the limited purposes set forth in Section 13.22 of the Credit Agreement, the Company, solely for the limited purposes set forth in Section 13.22 of the Credit Agreement, the financial institutions party thereto from time to time (the “**Lenders**”), and the Administrative Agent;

WHEREAS, it is the intent of the parties hereto that the Existing Guaranty be amended and restated in its entirety pursuant to this Agreement, and that this Agreement not constitute a novation of the liabilities and obligations existing under the Existing Guaranty and the Existing Credit Agreement which remain outstanding;

WHEREAS, it is a condition precedent to the amendment and restatement of, and the continuation of, the credit by the Lenders under the Credit Agreement that each of the Guarantors (constituting all of the Subsidiaries of the Borrower required to execute this Guaranty pursuant to Section 6.1 and Section 8.14 of the Credit Agreement) agree to guarantee the payment when due

of all Obligations, including, without limitation, all principal, interest and other amounts that shall be at any time payable by the Borrower under the Credit Agreement or the other Loan Documents;

WHEREAS, each Guarantor is owned or controlled by the Borrower; and

WHEREAS, in consideration of the direct and indirect financial and other support and benefits that the Borrower has provided, and such direct and indirect financial and other support and benefits as the Borrower may in the future provide, to the Guarantors, which significantly facilitates the business operations of the Borrower and each Guarantor and in order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement, and to make the Loans and the other financial accommodations to the Borrower, each of the Guarantors is willing to guarantee the Obligations under the Credit Agreement and the other Loan Documents;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Representations, Warranties and Covenants. Each of the Guarantors represents and warrants to the Administrative Agent and each other Guaranteed Party as of the date of this Guaranty, giving effect to the consummation of the transactions contemplated by the Loan Documents on the Effective Date that:

(a) It is a corporation, limited liability company, partnership or other legal entity, duly organized or formed, validly existing and in good standing under the jurisdiction of its incorporation or formation, has the power and authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a domestic or foreign corporation, partnership or other legal entity, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect. No Guarantor is an Affected Financial Institution.

(b) It has the right and power, and has taken all necessary corporate, limited liability company or partnership action required to authorize it, to execute, deliver and perform this Guaranty in accordance with its terms and to perform its obligations hereunder. This Guaranty has been duly executed and delivered by the duly authorized officers of such Guarantor and is a legal, valid and binding obligation of such Guarantor enforceable against such Guarantor in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein and as may be limited by equitable principles generally.

(c) The execution, delivery and performance of this Guaranty in accordance with its terms and the obligations hereunder do not and will not, by the passage of time, the giving of notice, or both:

(i) require any Governmental Approval or violate any Applicable Law (including all Environmental Laws) relating to such Guarantor; (ii) conflict with, result in

a breach of or constitute a default under the organizational documents of such Guarantor, or any indenture, agreement or other instrument to which such Guarantor is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by such Guarantor other than in favor of the Administrative Agent for its benefit and the benefit of the Guaranteed Parties. It is in compliance with each Governmental Approval and all other Applicable Laws (including, without limitation, Anti-Corruption Laws and Sanctions) relating to it except for non-compliances which, and Governmental Approvals the failure to possess which, could not, individually or in the aggregate, reasonably be expected to cause a Default or Event of Default or have a Material Adverse Effect.

(d) It has no Indebtedness other than Indebtedness permitted under the Credit Agreement.

In addition to the foregoing, each of the Guarantors hereby (i) makes to the Administrative Agent and the other Guaranteed Parties all of the other representations and warranties made by the Borrower with respect to or in any way relating to such Guarantor in the Credit Agreement and the other Guaranteed Documents (as defined below), as if the same were set forth herein in full and (ii) covenants that, so long as any Guaranteed Party has any Term Loan commitment, under the Credit Agreement or any outstanding Loan or other amount payable under the Credit Agreement or any other Obligations shall remain unpaid, it will, and, if necessary, will cause the Borrower to, fully comply with those covenants and agreements of the Borrower applicable to such Guarantor set forth in the Credit Agreement.

SECTION 2. The Guaranty. Each of the Guarantors hereby absolutely, irrevocably and unconditionally guarantees, jointly and severally with the other Guarantors, the full and punctual payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of the “Guaranteed Obligations” (as defined in the Credit Agreement), including, without limitation, (i) all indebtedness and obligations owing by the Borrower or any other Loan Party to any Lender or the Administrative Agent under or in connection with the Credit Agreement or any other Loan Document, including, without limitation, the repayment of all principal of and interest on each Loan made to the Borrower pursuant to the Credit Agreement, and the payment of all interest, fees, charges, attorneys’ fees and other amounts payable to any Lender or the Administrative Agent thereunder or in connection therewith, (ii) [reserved], (iii) all other amounts payable by the Borrower under the Credit Agreement and the other Loan Documents, (iv) [reserved], (v) any and all extensions, renewals, modifications, amendments or substitutions of the foregoing and (vi) all expenses, including, without limitation, attorneys’ fees and disbursements, that are incurred by the Administrative Agent or any other Guaranteed Party in the enforcement of any of the foregoing or any obligation of such Guarantor hereunder (all of the foregoing being herein referred to collectively as the “**Guaranteed Obligations**”). Upon the failure by the Borrower, or any of its Affiliates, as applicable, to pay punctually any such amount or perform such obligation, subject to any applicable grace or notice and cure period, each of the Guarantors agrees that it shall forthwith on demand pay such amount or perform such obligation at the place and in the manner specified in the Credit Agreement or the relevant other Guaranteed Document, as the case may be. Each of the Guarantors hereby agrees that this Guaranty is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection, and a debt

of each Guarantor for its own account. Accordingly, the Guaranteed Parties shall not be obligated or required before enforcing this Guaranty against any Guarantor: (a) to pursue any right or remedy the Guaranteed Parties may have against the Borrower, any other Loan Party or any other Person or commence any suit or other proceeding against the Borrower, any other Loan Party or any other Person in any court or other tribunal; (b) to make any claim in a liquidation or bankruptcy of the Borrower, any other Loan Party or any other Person; or (c) to make demand of the Borrower, any other Loan Party or any other Person or to enforce or seek to enforce or realize upon any collateral security held by the Guaranteed Parties which may secure any of the Guaranteed Obligations.

SECTION 3. Guaranty Unconditional. Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the documents evidencing the same, regardless of any Applicable Law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Guaranteed Parties with respect thereto. The obligations of each of the Guarantors hereunder shall be unconditional, irrevocable and absolute, and, without limiting the generality of the foregoing, shall remain in full force and effect without regard to, and shall not be released, discharged, suspended, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation, the following (whether or not such Guarantor consents thereto or has notice thereof):

(i) any extension, renewal, settlement, indulgence, compromise, consent to departure from, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any of the Credit Agreement, any other Loan Document, or any other document, instrument or agreement evidencing or relating to any Guaranteed Obligations (the “**Guaranteed Documents**”), or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;

(ii) any modification or amendment of or supplement to, or deletion from, or any other action or inaction under or in respect of, any Guaranteed Document or any assignment or transfer of any Guaranteed Document, including, without limitation, any such amendment which may

(iii) increase the amount of, or the interest rates applicable to, or change the due date of, any of the Guaranteed Obligations guaranteed hereby, or (y) change the time, place or manner of payment of all or any portion of the Guaranteed Obligations;

(iv) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof;

(v) any change in the corporate, partnership, limited liability company or other existence, structure or ownership of the Borrower, the Company, the Parent or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization, composition, adjustment, dissolution, liquidation or other similar

proceeding affecting the Borrower, the Company, the Parent, any other Loan Party or any other Person, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower, the Company, the Parent or any other Loan Party, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding;

(vi) the existence of any defense, claim, setoff, counterclaim or other rights (other than payment and performance in full) which the Guarantors may have at any time or be asserted by any Guarantor or any other Loan Party or any other Person against the Borrower, any Guarantor, any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any other Guaranteed Party or any other Person, whether in connection herewith or in connection with any unrelated transactions, provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(vii) any lack of enforceability or validity of the Guaranteed Obligations or any part thereof or any lack of genuineness, enforceability or validity of any Guaranteed Document or any assignment or transfer of any Guaranteed Document, or any other invalidity or unenforceability relating to or against the Borrower, any Guarantor or any other guarantor of any of the Guaranteed Obligations, for any reason related to the Credit Agreement or any other Guaranteed Document, or any provision of applicable law, decree, order or regulation purporting to prohibit the payment by the Borrower, any Guarantor or any other guarantor of the Guaranteed Obligations, of any of the Guaranteed Obligations or otherwise affecting any term of any of the Guaranteed Obligations;

(viii) any furnishing to any of the Guaranteed Parties of any security for any of the Guaranteed Obligations, or any sale, exchange, release or surrender of, or realization on, any collateral securing any of the Guaranteed Obligations;

(ix) any settlement or compromise of any of the Guaranteed Obligations, any security therefor, or any liability of any other party with respect to any of the Guaranteed Obligations, or any subordination of the payment of any of the Guaranteed Obligations to the payment of any other liability of the Borrower or any other Loan Party;

(x) the election by, or on behalf of, any one or more of the Guaranteed Parties, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (or any successor statute, the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(xi) any borrowing or grant of a security interest by the Borrower, as debtor-in- possession, under Section 364 of the Bankruptcy Code;

(xii) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Administrative Agent or the other Guaranteed Parties for repayment of all or any part of the Guaranteed Obligations;

- (xiii) any act or failure to act by any Loan Party or any other Person which may adversely affect such Guarantor's subrogation rights, if any, against any other Loan Party or any other Person to recover payments made under this Guaranty;
- (xiv) any nonperfection or impairment of any security interest or other Lien on any collateral, if any, securing in any way any of the Guaranteed Obligations;
- (xv) any application of sums paid by any Loan Party or any other Person with respect to the liabilities of any Loan Party to any of the Guaranteed Parties, regardless of what liabilities of the Borrower remain unpaid;
- (xvi) any defect, limitation or insufficiency in the borrowing powers of the Borrower or in the exercise thereof;
- (xvii) any statement, representation or warranty made or deemed made by or on behalf of any Loan Party under any Guaranteed Document, or any amendment hereto or thereto, proves to have been incorrect or misleading in any respect;
- (xviii) the failure of any other guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof; or
- (xix) any other act, or omission to act, or delay of any kind by the Borrower, any Guarantor, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any other Guaranteed Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 3, constitute a legal or equitable discharge of or a defense available to any Guarantor's obligations hereunder (other than payment and performance in full) or otherwise reduce, release, prejudice or extinguish its liability under this Guaranty.

The Guaranteed Parties may, at any time and from time to time, without the consent of, or notice to, any Guarantor, and without discharging any Guarantor from its obligations hereunder, take any and all actions described in this Section 3 and may otherwise: (a) amend, modify, alter or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations or changing the interest rate that may accrue on any of the Guaranteed Obligations; (b) amend, modify, alter or supplement any Guaranteed Document; (c) sell, exchange, release or otherwise deal with all, or any part, of any collateral securing any of the Guaranteed Obligations; (d) release any Loan Party or other Person liable in any manner for the payment or collection of any of the Guaranteed Obligations; (e) exercise, or refrain from exercising, any rights against any Loan Party or any other Person; and (f) apply any sum, by whomsoever paid or however realized, to the Guaranteed Obligations in such order as the Guaranteed Parties shall elect.

SECTION 4. Discharge; Reinstatement In Certain Circumstances. Each of the Guarantors' obligations hereunder shall remain in full force and effect until the earlier of (such date the "**Termination Date**") (a)(i) all Guaranteed Obligations shall have been paid in full in cash (other than Unliquidated Obligations that have not yet arisen), (ii) the Term Loan commitments under the Credit Agreement shall have terminated or expired, and (iii) each Guaranteed Document shall have been terminated or cancelled in accordance with its terms, at which time, subject to all

the foregoing conditions, the guarantees made hereunder shall automatically terminate, or (b) a Guarantor shall be released of its obligations under this Guaranty pursuant to Section 8.14.(b) of the Credit Agreement. If claim is ever made on the Administrative Agent or any other Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations, and the Administrative Agent or such other Guaranteed Party repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body of competent jurisdiction, or (b) any settlement or compromise of any such claim effected by the Administrative Agent or such other Guaranteed Party with any such claimant (including the Borrower or a trustee in bankruptcy for the Borrower or any Guarantor), then and in such event each Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of any of the Guaranteed Documents and such Guarantor shall be and remain liable to the Administrative Agent or such other Guaranteed Party for the amounts so repaid or recovered to the same extent as if such amount had never originally been paid to the Administrative Agent or such other Guaranteed Party.

“**Unliquidated Obligations**” means at any time, any Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Obligation that is (i) any obligation (including any guarantee) under the Credit Agreement that is contingent in nature at such time; or (ii) an obligation under the Credit Agreement to provide collateral to secure any of the foregoing types of obligations.

SECTION 5. General Waivers; Additional Waivers.

(a) General Waivers. Each of the Guarantors irrevocably waives notice of acceptance hereof, presentment, demand or action on delinquency, protest, the benefit of any statutes of limitations and, to the fullest extent permitted by law, any notice of any kind not provided for herein or under the other Guaranteed Documents, as well as any other act or thing, or omission or delay to do any other act or thing, or any other requirement that at any time any action be taken by any Person against the Borrower, such Guarantor, any other guarantor of the Guaranteed Obligations, or any other Person, which in any manner or to any extent might vary the risk of such Guarantor or which otherwise might operate to discharge such Guarantor from its obligations hereunder.

(b) Additional Waivers. Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives, to the fullest extent permitted by law:

(i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;

(ii) (1) notice of acceptance hereof; (2) notice of any Loans or other financial accommodations made or extended under the Guaranteed Documents or the creation or existence of any Guaranteed Obligations; (3) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor’s right to make inquiry of the Administrative Agent and the other Guaranteed Parties to ascertain the amount of the Guaranteed Obligations at any reasonable time; (4) notice of any adverse change in the

financial condition of the Borrower or of any other fact that might increase such Guarantor's risk hereunder; (5) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Guaranteed Documents; (6) notice of any Default or Event of Default under the Credit Agreement or of any default or event of default under any other Guaranteed Document; and (7) all other notices (except if such notice is specifically required to be given to such Guarantor hereunder or under the Guaranteed Documents) and demands to which each Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the other Guaranteed Parties to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the other Guaranteed Parties has or may have against, until the REIT Bad-Act Guaranty Termination Date has occurred, the Company or, until the Parent Guarantor Termination Date has occurred, the Parent, the other Guarantors or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and paid in full in cash) of, until the REIT Bad-Act Guaranty Termination Date has occurred, the Company or, until the Parent Guarantor Termination Date has occurred, the Parent or other Guarantors or by reason of the cessation from any cause whatsoever (other than full and final performance and payment in full in cash) of the liability of the Company or other Guarantors in respect thereof;

(iv) (a) any rights to assert against the Administrative Agent and the other Guaranteed Parties any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against the Company, the Parent, other Guarantors or any other party liable to the Administrative Agent and the other Guaranteed Parties unless due to the gross negligence or willful misconduct of the Administrative Agent or such Guaranteed Party as determined by a court of competent jurisdiction in a final non-appealable judgment; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of sufficiency, validity, or enforceability of the Guaranteed Obligations; (c) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by reason of: (1) the impairment or suspension of the Administrative Agent's and the other Guaranteed Parties' rights or remedies against the other guarantor of the Guaranteed Obligations; (2) the alteration by the Administrative Agent and the other Guaranteed Parties of the Guaranteed Obligations; (3) any discharge of the obligations of the Company, the Parent or other Guarantors to the Administrative Agent and the other Guaranteed Parties by operation of law as a result of the Administrative Agent's and the other Guaranteed Parties' intervention or omission; or (4) the acceptance by the Administrative Agent and the other Guaranteed Parties of anything in partial satisfaction of the Guaranteed Obligations; and (d) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Guaranteed

Parties; or (b) any election by the Administrative Agent and the other Guaranteed Parties under the Bankruptcy Code, to limit the amount of its claim against the Guarantors.

SECTION 6. Subordination of Subrogation; Subordination of Intercompany Indebtedness.

(a) Subordination of Subrogation. Until the Termination Date, the Guarantors (i) shall have no right of subrogation with respect to such Guaranteed Obligations and shall not enforce any right or receive any payment by way of subrogation or otherwise take any action in respect of any other claim or cause of action such Guarantor may have against such Loan Party arising by reason of any payment or performance by such Guarantor pursuant to this Guaranty and (ii) waive any right to enforce any remedy which any of the Guaranteed Parties now have or may hereafter have against the Borrower, any Guarantor, any endorser or any guarantor of all or any part of the Guaranteed Obligations or any other Person. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, each Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off that such Guarantor may have to the payment in full in cash of the Guaranteed Obligations until the Guaranteed Obligations are paid in full in cash (other than Unliquidated Obligations) and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations are paid in full in cash (other than Unliquidated Obligations that have not yet arisen). Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the other Guaranteed Parties and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the other Guaranteed Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 6(a). If any amount shall be paid to any Guarantor on account of or in respect of such subrogation rights or other claims or causes of action, such Guarantor shall hold such amount in trust for the benefit of the Guaranteed Parties and shall forthwith pay such amount to the Administrative Agent to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement or to be held by the Administrative Agent as collateral security for any Guaranteed Obligations existing.

(b) Subordination of Intercompany Indebtedness. Each Guarantor agrees for the benefit of the Guaranteed Parties that any and all claims of such Guarantor against the Borrower, the Company, the Parent, any other Guarantor hereunder or any other Loan Party (each an "**Obligor**") with respect to all obligations and liabilities of any Obligor to such Guarantor of whatever description, including, without limitation, any "Intercompany Indebtedness" (as hereinafter defined), any endorser, obligor or any other guarantor of all or any part of the Guaranteed Obligations, or against any of its properties (collectively, the "**Junior Claims**") shall be subordinate and junior in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations until the Termination Date; provided that, as long as no Event of Default has occurred and is continuing, such Guarantor may receive payments of principal and interest from any Obligor with respect to any Junior Claim. Notwithstanding any right of any Guarantor to ask, demand, sue for, take or receive any payment from any Obligor, all rights, liens and security interests of such Guarantor, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Administrative Agent and

the other Guaranteed Parties in those assets. Until the Termination Date, no Guarantor shall have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Guaranteed Obligations shall have been fully and paid and satisfied (in cash) and all financing arrangements pursuant to any Guaranteed Document have been terminated. Until the Termination Date, if all or any part of the assets of any Obligor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of such Obligor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of any such Obligor is dissolved or if substantially all of the assets of any such Obligor are sold, then, and in any such event (such events being herein referred to as an “**Insolvency Event**”), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of any Obligor to any Guarantor (“**Intercompany Indebtedness**”) shall be paid or delivered directly to the Administrative Agent for application on any of the Guaranteed Obligations, due or to become due, until such Guaranteed Obligations shall have first been fully and paid and satisfied (in cash). Prior to the Termination Date, should any payment, distribution, security or instrument or proceeds thereof be received by the applicable Guarantor upon or with respect to the Intercompany Indebtedness after any Insolvency Event and prior to the satisfaction of all of the Guaranteed Obligations and the termination of all Guaranteed Documents, such Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Guaranteed Parties and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Guaranteed Parties, in precisely the form received (except for the endorsement or assignment of such Guarantor where necessary), for application to any of the Guaranteed Obligations, due or not due, and, until so delivered, the same shall be held in trust by the Guarantor as the property of the Guaranteed Parties. If any such Guarantor fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Until the Termination Date, each Guarantor agrees that until the Guaranteed Obligations (other than the Unliquidated Obligations) have been paid in full (in cash) and satisfied and all Guaranteed Documents have been terminated, no Guarantor will assign or transfer to any Person (other than the Administrative Agent) any Junior Claim.

SECTION 7. Contribution with Respect to Guaranteed Obligations.

(a) To the extent that any Guarantor shall make a payment under this Guaranty (a “**Guarantor Payment**”) which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor’s “Allocable Amount” (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following payment in full in cash of the Guarantor Payment and the Guaranteed Obligations (other than Unliquidated Obligations that have not yet arisen), and Term Loan commitments have terminated or expired and each Guaranteed Document has terminated, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the “**Allocable Amount**” of any Guarantor shall be equal to the excess of the fair saleable value of the property of such Guarantor over the total liabilities of such Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 7 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 7 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(e) (i) The payment obligations of any Guarantor under this Section 7 shall be subordinate and subject in right of payment to the Guaranteed Obligations and (ii) the rights of the indemnifying Guarantors against other Guarantors under this Section 7 shall not be exercisable, in each case, until the full and payment of the Guaranteed Obligations in cash (other than Unliquidated Obligations that have not yet arisen) and the termination or expiry, on terms reasonably acceptable to the Administrative Agent, of Term Loan commitments and the termination of each Guaranteed Document. Subject to Section 6(a) of this Guaranty, this Section shall not be deemed to affect any right of subrogation, indemnity, reimbursement or contribution that any Guarantor may have under Applicable Law against any other Loan Party in respect of any payment of Guaranteed Obligations.

SECTION 8. Limitation of Guaranty. Notwithstanding any other provision of this Guaranty, it is the intent of each Guarantor and the Guaranteed Parties that in any Proceeding, the maximum amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder (or any other obligations of such Guarantor to the Guaranteed Parties) shall not be subject to avoidance or be deemed unenforceable against such Guarantor in such Proceeding as a result of Applicable Law, including, without limitation, Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law applied in such Proceeding (such provisions, the “**Avoidance Provisions**”), whether by virtue of Section 544 of the Bankruptcy Code or otherwise. In determining the limitations, if any, on the amount of any Guarantor’s obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Guaranty, any other agreement or applicable law shall be taken into account. Accordingly, to the extent that the obligations of any Guarantor hereunder would otherwise be subject to avoidance under the Avoidance Provisions, the maximum Guaranteed Obligations for which such Guarantor shall be liable hereunder shall be reduced to that amount which, as of the time any of the Guaranteed Obligations are deemed to have been incurred under the Avoidance Provisions, would not cause the obligations of any Guarantor hereunder (or any other obligations of such Guarantor to the Guaranteed Parties), to be subject to avoidance under the Avoidance

Provisions. This Section is intended solely to preserve the rights of the Administrative Agent and the other Guaranteed Parties hereunder to the maximum extent that would not cause the obligations of any Guarantor hereunder to be subject to avoidance under the Avoidance Provisions, and no Guarantor or any other Person shall have any right or claim under this Section as against the Guaranteed Parties that would not otherwise be available to such Person under the Avoidance Provisions.

“**Proceeding**” means any of the following: (i) a voluntary or involuntary case concerning any Guarantor shall be commenced under the Bankruptcy Code; (ii) a custodian (as defined in such Bankruptcy Code or any other applicable bankruptcy laws) is appointed for, or takes charge of, all or any substantial part of the property of any Guarantor; (iii) any other proceeding under any Applicable Law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up or composition for adjustment of debts, whether now or hereafter in effect, is commenced relating to any Guarantor; (iv) any Guarantor is adjudicated insolvent or bankrupt; (v) any order of relief or other order approving any such case or proceeding is entered by a court of competent jurisdiction; (vi) any Guarantor makes a general assignment for the benefit of creditors; (vii) any Guarantor shall fail to pay, or shall state that it is unable to pay, or shall be unable to pay, its debts generally as they become due; (viii) any Guarantor shall call a meeting of its creditors with a view to arranging a composition or adjustment of its debts; (ix) any Guarantor shall by any act or failure to act indicate its consent to, approval of or acquiescence in any of the foregoing; or (x) any corporate action shall be taken by any Guarantor for the purpose of effecting any of the foregoing.

SECTION 9. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower, or any Loan Party under the Credit Agreement or any other Guaranteed Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, the Company, the Parent, any Guarantor, such Loan Party or any of their respective Affiliates or otherwise under Applicable Law, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement or any other Guaranteed Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Administrative Agent or the other Guaranteed Parties.

SECTION 10. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Section 13.1 of the Credit Agreement with respect to the Administrative Agent at its notice address therein and, with respect to any Guarantor, in the care of the Borrower at the address of the Borrower set forth in the Credit Agreement, or such other address or telecopy number as such party may hereafter specify for such purpose in accordance with the provisions of Section 13.1 of the Credit Agreement.

SECTION 11. No Waivers. No failure or delay by the Administrative Agent or any other Guaranteed Party in exercising any right, power or privilege hereunder or otherwise shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Credit Agreement and the other Guaranteed Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 12. Successors and Assigns. This Guaranty is for the benefit of the Administrative Agent and the other Guaranteed Parties and their respective successors and

permitted assigns (including, but not limited to, any holder of the Guaranteed Obligations) in whose favor the provisions of this Guaranty also shall inure, and each reference herein to each Guarantor shall be deemed to include such Guarantor's successors and assigns, upon whom this Guaranty also shall be binding. The Guaranteed Parties may, in accordance with the applicable provisions of the Guaranteed Documents, assign, transfer or sell any Guaranteed Obligation, or grant or sell participations in any Guaranteed Obligations, to any Person without the consent of, or notice to, any Guarantor and without releasing, discharging or modifying any Guarantor's obligations hereunder. Each Guarantor hereby consents to the delivery by the Administrative Agent and any other Guaranteed Party to any Assignee or Participant (or any prospective Assignee or Participant) of any financial or other information regarding the Borrower or any Guarantor. No Guarantor shall have any right to assign or transfer its rights or obligations hereunder without the prior written consent of the Administrative Agent, and any such assignment or transfer in violation of this Section 12 shall be null and void; and in the event of an assignment of any amounts payable under the Credit Agreement or the other Guaranteed Documents in accordance with the respective terms thereof, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty shall be binding upon each of the Guarantors and their respective successors and assigns.

SECTION 13. Changes in Writing. Other than in connection with the addition of additional Subsidiaries, which become parties hereto by executing a Guaranty Supplement hereto in the form attached as Annex I, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by each of the Guarantors and the Administrative Agent, subject to Section 13.7 of the Credit Agreement.

SECTION 14. Governing Law; Jurisdiction.

(a) THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

(b) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE GUARANTORS AND ANY OF THE GUARANTEED PARTIES WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE GUARANTEED PARTIES, BY ACCEPTING THE BENEFITS HEREOF, AND EACH OF THE GUARANTORS HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS GUARANTY, THE CREDIT AGREEMENT, THE NOTES, OR ANY OTHER GUARANTEED DOCUMENT OR WITH ANY COLLATERAL OR ANY LIEN OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE BORROWER, THE GUARANTORS, THE COMPANY, THE PARENT, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE GUARANTEED DOCUMENTS.

(c) EACH GUARANTOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS GUARANTY OR ANY OTHER GUARANTEED DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL, NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY OR IN ANY OTHER GUARANTEED DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER GUARANTEED DOCUMENT AGAINST ANY GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT OR ANY LENDER OR THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(d) EACH GUARANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE BORROWER AT ITS ADDRESS FOR NOTICES PROVIDED FOR IN THE CREDIT AGREEMENT. SHOULD A GUARANTOR FAIL TO APPEAR OR ANSWER ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THIRTY (30) DAYS AFTER THE MAILING THEREOF, SUCH GUARANTOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST IT AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

(e) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING

OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER GUARANTEED DOCUMENTS, THE TERMINATION OF EACH GUARANTEED DOCUMENT AND THE TERMINATION OF THIS GUARANTY.

SECTION 15. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 16. Taxes; Expenses of Enforcement, Etc.

(a) Taxes. All payments by any Guarantor of principal of, and interest on, the Loans and all other Obligations shall be paid in full, made free and clear of and without set-off or counterclaim or any deduction or withholding whatsoever (including for any Taxes). If any withholding or deduction from any payment to be made by a Guarantor hereunder is required in respect of any Taxes or any other deduction or withholding pursuant to any Applicable Law, then such Guarantor shall pay to the Administrative Agent and the Lenders such additional amount as will result in the receipt by the Administrative Agent and the Lenders of the full amount payable hereunder had such deduction or withholding not occurred or been required.

(b) The Guarantors agree to reimburse the Guaranteed Parties for any reasonable costs and out-of-pocket expenses (including attorneys' fees) paid or incurred by any Guaranteed Party in connection with the collection and enforcement of amounts due under the Guaranteed Documents, including without limitation this Guaranty.

SECTION 17. Set-Off. In addition to any rights now or hereafter granted under any of the other Guaranteed Documents or Applicable Law and not by way of limitation of any such rights, each Guarantor hereby authorizes each Guaranteed Party, each Affiliate of a Guaranteed Party, and each Participant, at any time while an Event of Default exists, without any prior notice to such Guarantor or to any other Person, any such notice being hereby expressly waived, but in the case of a Guaranteed Party (other than the Administrative Agent), an Affiliate of a Guaranteed Party (other than the Administrative Agent), or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set-off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by a Guaranteed Party, an Affiliate of a Guaranteed Party or such Participant to or for the credit or the account of such Guarantor against and on account of any of the Guaranteed Obligations, although such obligations shall be contingent or unmatured. Each Guarantor agrees, to the fullest extent permitted by Applicable Law, that any Participant may exercise rights of setoff or counterclaim and other rights with respect to its participation as fully as if such Participant were a direct creditor of such Guarantor in the amount of such participation.

SECTION 18. Financial Information. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower, the other Loan Parties and any and all endorsers and/or other guarantors of all or any part of the Guaranteed Obligations, and of

all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and each Guarantor hereby agrees that neither the Administrative Agent nor any other Guaranteed Party shall have any duty to advise such Guarantor of information known to any of them regarding such condition or any such circumstances. In the event the Administrative Agent or any other Guaranteed Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Guaranteed Party or the Administrative Agent shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Guaranteed Party or the Administrative Agent, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

SECTION 19. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Guaranty shall be prohibited by or invalid or unenforceable under any such Applicable Law, such provision shall be ineffective to the extent of such prohibition, unenforceability or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 20. Merger. This Guaranty represents the final agreement of each of the Guarantors with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between each such Guarantor and the Administrative Agent or any other Guaranteed Party.

SECTION 21. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 22. Termination of Guarantors. This Guaranty shall remain in full force and effect with respect to each Guarantor until the Termination Date; provided that the obligations of any Guarantor under this Guaranty shall automatically terminate in accordance with Section 8.14.(b) of the Credit Agreement.

SECTION 23. Parent and Company. CBL & Associates Limited Partnership and CBL & Associates Properties, Inc., shall not be personally liable for the payment of the Guaranteed Obligations, except to the extent provided for in Section 13.22 of the Credit Agreement, for the Company, until the REIT Bad-Act Guaranty Termination Date has occurred or for the Parent, until the Guarantor Termination Date has occurred.

SECTION 24. Loan Accounts. The Administrative Agent and each other Guaranteed Party may maintain books and accounts setting forth the amounts of principal, interest and other sums paid and payable with respect to the Guaranteed Obligations arising under or in connection with the Guaranteed Documents, and in the case of any dispute relating to any of the outstanding amount, payment or receipt of any of such Guaranteed Obligations or otherwise, the entries in such books and accounts shall be binding on the Guarantors absent manifest error. The failure of the Administrative Agent or any other Guaranteed Party to maintain such books and accounts shall not in any way relieve or discharge any Guarantor of any of its obligations hereunder.

SECTION 25. JOINT AND SEVERAL OBLIGATIONS. THE OBLIGATIONS OF THE GUARANTORS HEREUNDER SHALL BE JOINT AND SEVERAL, AND ACCORDINGLY, EACH GUARANTOR CONFIRMS THAT IT IS LIABLE FOR THE FULL AMOUNT OF THE “GUARANTEED OBLIGATIONS” AND ALL OF THE OBLIGATIONS AND LIABILITIES OF EACH OF THE OTHER GUARANTORS HEREUNDER.

SECTION 26. Payments. All payments to be made by any Guarantor pursuant to this Guaranty shall be made in Dollars, in immediately available funds to the Administrative Agent at its Principal Office, not later than 1:00 p.m. Central time, on the date one Business Day after demand therefor.

SECTION 27. Limitation of Liability. None of the Administrative Agent, any other Guaranteed Party or any of their respective Related Parties shall have any liability with respect to, and each Guarantor hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by a Guarantor in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guaranteed Documents, or any of the transactions contemplated by this Guaranty or any of the other Guaranteed Documents. Each Guarantor hereby waives, releases, and agrees not to sue the Administrative Agent, any other Guaranteed Party or any of their respective Related Parties for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guaranteed Documents, or any of the transactions contemplated by thereby.

SECTION 28. Electronic Delivery of Certain Information. Each Guarantor acknowledges and agrees that information regarding the Guarantor may be delivered electronically pursuant to Section 9.5 of the Credit Agreement.

SECTION 29. [Reserved]

SECTION 30. Amendment and Restatement; No Novation. This Guaranty constitutes an amendment and restatement of the Existing Guaranty, effective from and after the date hereof. The execution and delivery of this Guaranty shall not constitute a novation of the Obligations or any other obligations owing to the Lenders or the Administrative Agent under the Existing Credit Agreement, the Existing Guaranty or any other Loan Document. Each of the parties hereto hereby acknowledges and agrees that the guarantee of the Obligations pursuant to Section 1 of this Guaranty is not intended to, nor shall it be construed, as constituting a release of any prior guarantee by the Guarantors in favor of Administrative Agent under the Existing Guaranty, but is intended to constitute a restatement and reconfirmation of the prior guarantee by the Guarantors in favor of Administrative Agent (for the benefit of the Lenders) of the Obligations.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each Initial Guarantor has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

CBL RM-Waco, LLC
CBL SM-Brownsville, LLC
CBL/Westmoreland I, LLC
CBL/Westmoreland II, LLC
Cherryvale Mall, LLC
Frontier Mall II, LLC
Hixson Mall, LLC
Imperial Valley Mall GP, LLC
JG Winston-Salem, LLC
Kirkwood Mall Acquisition, LLC
Layton Hills Mall CMBS, LLC
Madison/East Towne, LLC
Madison/West Towne, LLC
Madison Mall Ground, LLC
Mall del Norte, LLC
Mayfaire GP, LLC
Pearland Ground, LLC
Pearland Town Center GP, LLC
POM-College Station, LLC
Southaven Towne Center, LLC
Turtle Creek GP, LLC
Valley View Mall SPE, LLC

By: CBL & Associates Limited Partnership,
as the chief manager of each of the above listed limited
liability companies

By: CBL Holdings I, Inc., its general partner

By: _____
Farzana Khaleel
Executive Vice President and Chief Financial Officer

*Signature Page to
Subsidiary Guaranty*

**Frontier Mall Associates Limited Partnership
Turtle Creek Limited Partnership**

By: CBL & Associates Holdco I, LLC,
as the general partner of each of the above listed limited
partnerships

By: CBL & Associates Limited Partnership,
its chief manager

By: CBL Holdings I, Inc., its general partner

By: _____
Farzana Khaleel
Executive Vice President and Chief Financial Officer

Imperial Valley Mall II, L.P.

By: Imperial Valley Mall GP, LLC, its general partner

Mayfaire Town Center, LP

By: Mayfaire GP, LLC, its general partner

Pearland Town Center Limited Partnership

By: Pearland Town Center GP, LLC, its general partner of the
above listed limited partnerships

By: CBL & Associates Holdco I, LLC,
as the chief manager of the general partner of each

By: CBL & Associates Limited Partnership,
its chief manager

By: CBL Holdings I, Inc., its general partner

By: _____
Farzana Khaleel
Executive Vice President and Chief Financial Officer

*Signature Page to
Subsidiary Guaranty*

CBL/Westmoreland, L.P.

By: CBL/Westmoreland I, LLC, its general partner

By: CBL & Associates Limited Partnership,
its chief manager

By: CBL Holdings I, Inc., its general partner

By: _____
Farzana Khaleel
Executive Vice President and Chief Financial Officer

*Signature Page to
Subsidiary Guaranty*

Acknowledged and Agreed to:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name:
Title:

*Signature Page to
Subsidiary Guaranty*

ANNEX I TO GUARANTY

Reference is hereby made to the Amended and Restated Guaranty (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty"), dated as of [], 2021, made by each of the Subsidiaries of CBL & Associates Holdco I, LLC (the "**Borrower**") listed on the signature pages thereto (each an "**Initial Guarantor**", and together with any additional Subsidiaries which become parties to the Guaranty by executing Guaranty Supplements thereto substantially similar in form and substance hereto, the "**Guarantors**"), in favor of the Administrative Agent, for the ratable benefit of the Guaranteed Parties, under the Credit Agreement. Each capitalized term used herein and not defined herein shall have the meaning given to it in the Guaranty.

By its execution below, the undersigned, [NAME OF NEW GUARANTOR], a [] [corporation] [partnership] [limited liability company] (the "**New Guarantor**"), agrees to become, and does hereby become, a Guarantor under the Guaranty and agrees to be bound by such Guaranty as if originally a party thereto. By its execution below, the undersigned represents and warrants as to itself that all of the representations and warranties contained in Section 1 of the Guaranty are true and correct in all respects as of the date hereof.

IN WITNESS WHEREOF, the New Guarantor has executed and delivered this Annex I counterpart to the Guaranty as of this ____ day of _____, 20__.

[NAME OF NEW GUARANTOR]

By _____

Name:

Title:

Exhibit B - 23

EXHIBIT C

[Reserved]

Exhibit C - 1

EXHIBIT D

NOTICE OF CONTINUATION

CBL & ASSOCIATES HOLDCO I, LLC

_____, 20__

Wells Fargo Bank, National Association
123 North Wacker Drive, Suite 1900
Chicago, Illinois 60606
Attention: _____

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement dated as of [____], 2021 (as it may be amended from time to time, the "Credit Agreement"), by and among CBL & Associates Holdco I, LLC, a Delaware limited liability company (the "Borrower"), CBL & Associates Limited Partnership, a Delaware limited partnership (the "Parent"), solely for the limited purposes set forth therein, CBL & Associates Properties, Inc., a Delaware corporation (the "Company"), solely for the limited purposes set forth therein, Wells Fargo Bank, National Association and the other lenders from time to time party thereto (collectively, together with Assignees under Section 13.6 thereof, the "Lenders"), and Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein, have their respective meanings given them in this Credit Agreement.

Pursuant to Section 2.10 of the Credit Agreement, the Borrower hereby elects to maintain all, or the portion set forth below, of the LIBOR Loan in the amount of Dollars (\$●) and having an Interest Period expiring on (●), as a LIBOR Loan, and in that connection sets forth below the information relating to such continuation as required by such Section 2.10 of the Credit Agreement:

1. The requested date of such continuation is _____, 20__.
2. The amount of the existing LIBOR Loan to be continued as a LIBOR Loan is:
[Check one box only]
 All of said LIBOR Loan (being \$ _____)
 \$ _____
3. The current Interest Period of the Loans subject to such continuation ends on _____, 20__.
4. The amount of the LIBOR Loan being continued shall have an Interest Period of one month

The Borrower hereby certifies to the Administrative Agent and the Lenders that as of the date hereof, as of the proposed date of the requested continuation, and after giving effect to such continuation, (a) there exists no Default or Event of Default, nor will a Default or Event of Default exist immediately after giving effect to the continuation requested hereunder; and (b) all of the representations and warranties made by Borrower or any other Loan Party under the Credit Agreement or under any of the other Loan Documents are true and correct in all material respects (except that, to the extent any representation or warranty is qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of the date hereof with the same force and effect as if made on and as of such date, except to the extent such representations or warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except that, to the extent any representation or warranty is qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) on and as of such earlier date). In addition, the Borrower certifies to the Administrative Agent and the Lenders that all conditions to the making of the requested continuation contained in Article VI of the Credit Agreement will have been satisfied at the time such continuation is made.

CBL & ASSOCIATES HOLDCO I, LLC

By: CBL & Associates Limited Partnership,
[its sole member]

By: CBL Holdings I, Inc.,
its sole general partner

By: _____
Name: _____
Its: _____

EXHIBIT E

NOTICE OF CONVERSION

CBL & ASSOCIATES HOLDCO I, LLC

_____, 20__

Wells Fargo Bank, National Association
123 North Wacker Drive, Suite 1900
Chicago, Illinois 60606
Attention: _____

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement dated as of [____], 2021 (as it may be amended from time to time, the "Credit Agreement"), by and among CBL & Associates Holdco I, LLC, a Delaware limited liability company (the "Borrower"), CBL & Associates Limited Partnership, a Delaware limited partnership (the "Parent"), solely for the limited purposes set forth therein, CBL & Associates Properties, Inc., a Delaware corporation (the "Company"), solely for the limited purposes set forth therein, Wells Fargo Bank, National Association and the other lenders from time to time party thereto (collectively, together with Assignees under Section 13.6 thereof, the "Lenders") and Wells Fargo Bank, National Association, as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein, have their respective meanings given them in this Credit Agreement.

Pursuant to Section 2.11 of the Credit Agreement, the Borrower hereby requests a conversion of a Term Loan of one Type into a Term Loan of another Type, and in that connection sets forth below the information relating to such conversion as required by such Section 2.11 of the Credit Agreement:

1. The requested date of such conversion is _____, 20__.
2. The Type of Term Loan to be Converted pursuant hereto is currently:

[Check one box only]
 Base Rate Loan
 LIBOR Loan
3. The aggregate principal amount of the Term Loan subject to the requested conversion is (\$●) and the portion of such principal amount subject to such conversion is (\$●).
4. The amount of the LIBOR Loan being continued shall have an Interest Period of one month.

The Borrower hereby certifies to the Administrative Agent and the Lenders that as of the date hereof, as of the proposed date of the requested conversion, and after giving effect to such

conversion, (a) there exists no Default or Event of Default, nor will a Default or Event of Default exist immediately after giving effect to the conversion requested hereunder; and (b) all of the representations and warranties made by Borrower or any other Loan Party under the Credit Agreement or under any of the other Loan Documents are true and correct in all material respects (except that, to the extent any representation or warranty is qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of the date hereof with the same force and effect as if made on and as of such date, except to the extent such representations or warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except that, to the extent any representation or warranty is qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) on and as of such earlier date). In addition, the Borrower certifies to the Administrative Agent and the Lenders that all conditions to the making of the requested conversion contained in Article VI of the Credit Agreement will have been satisfied at the time such conversion is made.

CBL & ASSOCIATES HOLDCO I, LLC

By: CBL & Associates Limited Partnership,
[its sole member]

By: CBL Holdings I, Inc.,
its sole general partner

By: _____
Name: _____
Its: _____

EXHIBIT F

[Reserved]

Exhibit F - 1

EXHIBIT G

[FORM OF] PARENT GUARANTY

THIS PARENT GUARANTY (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “**Guaranty**”) is made as of November __, 2021 by CBL & Associates Limited Partnership (the “**Guarantor**”) in favor of Wells Fargo Bank, National Association, as Administrative Agent (the “**Administrative Agent**”), for its benefit and for the benefit of the Lenders under the Credit Agreement described below (the Administrative Agent and the Lenders, each individually a “**Guaranteed Party**” and collectively, the “**Guaranteed Parties**”). Unless otherwise defined herein, capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

WITNESSETH:

WHEREAS, CBL & Associates Holdco I, LLC (the “**Borrower**”), the Guarantor, CBL & Associates Properties, Inc. (the “**Company**”), the financial institutions party thereto from time to time (the “**Lenders**”) and the Administrative Agent are party to that certain Amended and Restated Credit Agreement dated as of November __, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), which Credit Agreement provides, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to or for the benefit of the Borrower;

WHEREAS, it is a condition precedent to the amendment and restatement of, and the continuation of, the credit by the Lenders under, the Credit Agreement that the Guarantor agree to provide this Guaranty;

WHEREAS, the Guarantor is an Affiliate of the Borrower; and

WHEREAS, in consideration of the direct and indirect financial and other support and benefits that the Borrower has provided, and such direct and indirect financial and other support and benefits as the Borrower may in the future provide, to the Guarantor, which significantly facilitates the business operations of the Borrower and the Guarantor, and in order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement, and to make the Loans and the other financial accommodations to the Borrower, the Guarantor is willing to provide this Guaranty;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions.

“**General Partner**” means CBL Holdings I, Inc., a Delaware corporation, and a Wholly Owned Subsidiary of the Company and the sole general partner of the Guarantor, and shall include the General Partner’s successors and permitted assigns.

SECTION 2. Representations, Warranties and Covenants. The Guarantor represents and warrants to the Administrative Agent and each other Guaranteed Party as of the date of this Guaranty, giving effect to the consummation of the transactions contemplated by the Loan Documents on the Effective Date, that:

(a) It is a limited partnership, duly organized, validly existing and in good standing under the jurisdiction of its formation, has the power and authority to own or lease its properties and to carry on its business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a limited partnership, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect. The Guarantor is not an Affected Financial Institution.

(b) It has the right and power, and has taken all necessary action required to authorize it, to execute, deliver and perform this Guaranty in accordance with its terms and to perform its obligations hereunder. This Guaranty has been duly executed and delivered by the duly authorized officers of the general partner of the Guarantor and is a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein and as may be limited by equitable principles generally.

(c) The execution, delivery and performance of this Guaranty in accordance with its terms and the obligations hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any Governmental Approval or violate any Applicable Law (including all Environmental Laws) relating to the Guarantor; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Guarantor, or any indenture, agreement or other instrument to which the Guarantor is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Guarantor other than in favor of the Administrative Agent for its benefit and the benefit of the Guaranteed Parties, except, in each such instances, either individually or in the aggregate, that could not reasonably be expected to have a Material Adverse Effect. It is in compliance with each Governmental Approval and all other Applicable Laws (including, without limitation, Anti-Corruption Laws and Sanctions) relating to it except for non-compliances which, and Governmental Approvals the failure to possess which, could not, individually or in the aggregate, reasonably be expected to cause a Default or Event of Default or have a Material Adverse Effect.

In addition to the foregoing and without limiting the ongoing reporting obligations of the Guarantor in Article IX of the Credit Agreement or the various Defaults in Article XI of the Credit Agreement which could result from actions by or impacting the Guarantor, the Guarantor hereby covenants that, so long as this Guaranty remains in effect until the Termination Date (as defined below), it will fully comply with those covenants and agreements of the Guarantor expressly set forth in Sections 8.1, 8.2, 8.7, and 8.10 of the Credit Agreement.

SECTION 3. The Guaranty.

(a) The Guarantor hereby absolutely, irrevocably and unconditionally guarantees the full and punctual payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of the “Guaranteed Obligations” (as defined in the Credit Agreement), including, without limitation, (i) all indebtedness and obligations owing by the Borrower or any other Loan Party to any Lender or the Administrative Agent under or in connection with the Credit Agreement or any other Loan Document, including, without limitation, the repayment of all principal of and interest on each Loan made to the Borrower pursuant to the Credit Agreement, and the payment of all interest, fees, charges, attorneys’ fees and other amounts payable to any Lender or the Administrative Agent thereunder or in connection therewith, (ii) [reserved], (iii) all other amounts payable by the Borrower under the Credit Agreement and the other Loan Documents, (iv) [reserved], (v) any and all extensions, renewals, modifications, amendments or substitutions of the foregoing and (vi) all expenses, including, without limitation, attorneys’ fees and disbursements, that are incurred by the Administrative Agent or any other Guaranteed Party in the enforcement of any of the foregoing or any obligation of such Guarantor hereunder (all of the foregoing being herein referred to collectively as the “**Guaranteed Obligations**”); provided, however, that the Guarantor’s maximum liability under this Guaranty and the maximum amount that may be asserted by the Guaranteed Parties under this Guaranty shall be limited to the sum of (i) \$175,000,000 (the “**Principal Liability Cap**”) plus (ii) any amounts due under Section 17 below in connection with enforcement of this Guaranty (clause (i) and (ii), collectively, the “**Guaranty Cap**”).

(b) The Principal Liability Cap set forth in subsection (a) above shall be reduced from time to time, on a dollar-for-dollar basis, as follows:

(i) The Principal Liability Cap shall be reduced by an amount equal to 100% of the first \$2,500,000 in principal amortization made by Borrower each calendar year pursuant to the requirements of Section 2.7(b) of the Credit Agreement, and shall further be reduced by 50% of the principal amortization payments made by Borrower each calendar year in excess of such first \$2,500,000 in principal amortization for such calendar year pursuant such Section 2.7(b) of the Credit Agreement;

(ii) The Principal Liability Cap shall be reduced by an amount equal to 100% of the amount of Excess Cash Flow that is applied to repay the principal amount of the Term Loans in accordance with Section 2.8(b)(iii) of the Credit Agreement, if any; and

(iii) The Principal Liability Cap shall be reduced by an amount equal to 150% of the amount of any voluntary principal amortization payments made by the Borrower under Section 2.8(a) of the Credit Agreement (which amounts, for clarity, shall not include any amortization required to be paid under Section 2.7(b), Section 2.8(b)(i) (other than to the limited extent set forth in clause (iv) below), Section 2.8(b)(ii) or Section 2.8(b)(iv) of the Credit Agreement).

(iv) The Principal Liability Cap shall be reduced by an amount equal to 100% of the amount by which the Net Cash Proceeds applied to repay the Loan pursuant to Section 2.8(b)(i) [i.e., from the sale of a Collateral Property] exceeds the applicable

Appraised Value of the Collateral Property being sold, with such Appraised Value determined based upon the Appraisals obtained by Administrative Agent prior to the Effective Date.

(c) The Guarantor agrees that it shall forthwith on demand pay any such amounts at the place and in the manner specified in the Credit Agreement or the relevant other Loan Document, as the case may be. The Guarantor hereby agrees that this Guaranty is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection, and a debt of the Guarantor for its own account. Accordingly, the Guaranteed Parties shall not be obligated or required before enforcing this Guaranty against the Guarantor: (i) to pursue any right or remedy the Guaranteed Parties may have against the Borrower, any other Loan Party or any other Person or commence any suit or other proceeding against the Borrower, any other Loan Party or any other Person in any court or other tribunal; (ii) to make any claim in a liquidation or bankruptcy of the Borrower, any other Loan Party or any other Person; or (iii) to make demand of the Borrower, any other Loan Party or any other Person or to enforce or seek to enforce or realize upon any collateral security held by the Guaranteed Parties which may secure any of the Guaranteed Obligations; provided, however, the maximum claim or demand that may be asserted by the Guaranteed Parties against the Guarantor (whether in a Proceeding (as defined below) or otherwise) shall be the Guaranty Cap (as may be reduced pursuant to this Section 3).

SECTION 4. Guaranty Unconditional. The Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the documents evidencing the same, regardless of any Applicable Law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Guaranteed Parties with respect thereto. The obligations of the Guarantor hereunder shall be unconditional, irrevocable and absolute, and, without limiting the generality of the foregoing, shall remain in full force and effect without regard to, and shall not be released, discharged, suspended, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation, the following (whether or not the Guarantor consents thereto or has notice thereof):

(i) any extension, renewal, settlement, indulgence, compromise, consent to departure from, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any of the Credit Agreement, any other Loan Document, or any other document, instrument or agreement evidencing or relating to any Guaranteed Obligations (the “**Guaranteed Documents**”), or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;

(ii) any modification or amendment of or supplement to, or deletion from, or any other action or inaction under or in respect of, any Guaranteed Document or any assignment or transfer of any Guaranteed Document, including, without limitation, any such amendment which may (x) increase the amount of, or the interest rates applicable to, or change the due date of, any of the Guaranteed Obligations guaranteed hereby, or (y) change the time, place or manner of payment of all or any portion of the Guaranteed Obligations;

(iii) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof;

(iv) any change in the corporate, partnership, limited liability company or other existence, structure or ownership of the Borrower, the Company or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization, composition, adjustment, dissolution, liquidation or other similar proceeding affecting the Borrower, the Company, any other Loan Party or any other Person, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower, the Company or any other Loan Party, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding;

(v) the existence of any defense, claim, setoff, counterclaim or other rights (other than payment and performance in full) which the Guarantor may have at any time or be asserted by the Guarantor or any Loan Party or any other Person against the Borrower, the Guarantor, any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any other Guaranteed Party or any other Person, whether in connection herewith or in connection with any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(vi) any lack of enforceability or validity of the Guaranteed Obligations or any part thereof or any lack of genuineness, enforceability or validity of any Guaranteed Document or any assignment or transfer of any Guaranteed Document, or any other invalidity or unenforceability relating to or against the Borrower, the Guarantor or any other guarantor of any of the Guaranteed Obligations, for any reason related to the Credit Agreement or any other Guaranteed Document, or any provision of applicable law, decree, order or regulation purporting to prohibit the payment by the Borrower, the Guarantor or any other guarantor of the Guaranteed Obligations, of any of the Guaranteed Obligations or otherwise affecting any term of any of the Guaranteed Obligations;

(vii) the election by, or on behalf of, any one or more of the Guaranteed Parties, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (or any successor statute, the “**Bankruptcy Code**”), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(viii) any furnishing to any of the Guaranteed Parties or any security for any of the Guaranteed Obligations, or any sale, exchange, release or surrender of, or realization on, any collateral securing any of the Guaranteed Obligations;

(ix) any settlement or compromise of any of the Guaranteed Obligations, any security therefor, or any liability of any other party with respect to any of the Guaranteed Obligations, or any subordination of the payment of any of the Guaranteed Obligations to the payment of any other liability of the Borrower or any other Loan Party;

- (x) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code;
- (xi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Administrative Agent or the other Guaranteed Parties for repayment of all or any part of the Guaranteed Obligations;
- (xii) the failure of any other guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof;
- (xiii) any act or failure to act by any Loan Party or any other Person which may adversely affect the Guarantor's subrogation rights, if any, against any Loan Party or any other Person to recover payments made under this Guaranty;
- (xiv) any nonperfection or impairment of any security interest or other Lien on any collateral, if any, securing in any way any of the Guaranteed Obligations;
- (xv) any application of sums paid by any Loan Party or any other Person with respect to the liabilities of any Loan Party to any of the Guaranteed Parties, regardless of what liabilities of the Borrower remain unpaid;
- (xvi) any defect, limitation or insufficiency in the borrowing powers of the Borrower or in the exercise thereof;
- (xvii) any statement, representation or warranty made or deemed made by or on behalf of any Loan Party under any Guaranteed Document, any amendment hereto or thereto, proves to have been incorrect or misleading in any respect; or
- (xviii) any other act or omission to act or delay of any kind by the Borrower, the Guarantor, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any other Guaranteed Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 3, constitute a legal or equitable discharge of or a defense available to the Guarantor's obligations hereunder (other than payment and performance in full) or otherwise reduce, release, prejudice or extinguish its liability under this Guaranty.

The Guaranteed Parties may, at any time and from time to time, without the consent of, or notice to, the Guarantor, and without discharging any Guarantor from its obligations hereunder, take any and all actions described in this Section 3 and may otherwise: (a) amend, modify, alter or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations or changing the interest rate that may accrue on any of the Guaranteed Obligations; (b) amend, modify, alter or supplement any Guaranteed Document; (c) sell, exchange, release or otherwise deal with all, or any part, of any collateral securing any of the Guaranteed Obligations; (d) release any Loan Party or other Person liable in any manner for the payment or collection of any of the Guaranteed Obligations; (e) exercise, or refrain from exercising, any rights against any Loan Party or any other Person; and (f) apply any sum, by whomsoever paid or however realized, to the Guaranteed Obligations in such order as the Guaranteed Parties shall elect.

SECTION 5. Discharge; Termination; Reinstatement In Certain Circumstances.

(a) The Guarantor's obligations hereunder shall remain in full force and effect until the earlier of (such date, the "**Termination Date**") (i) the date on which the Aggregate Outstanding Balance is less than or equal to \$650,000,000, (ii) at any time after November [], 2023,²² the date on which the Debt Yield Ratio, expressed as a percentage, is greater than 15.0%, (iii) the date on which all Guaranteed Obligations shall have been paid in full in cash (other than Unliquidated Obligations that have not yet arisen), and (iv) the date on which each Guaranteed Document shall have been terminated or cancelled in accordance with its terms, at which time, subject to all the foregoing conditions, the guarantees made hereunder shall automatically terminate. As used herein, "**Unliquidated Obligations**" means at any time, any Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Obligation that is: (A) any obligation (including any guarantee) under the Credit Agreement that is contingent in nature at such time; or (B) any obligation under the Credit Agreement to provide collateral to secure any of the foregoing types of obligations.

(b) If claim is ever made on the Administrative Agent or any other Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any Guaranteed Obligations, and the Administrative Agent or such other Guaranteed Party repays all or part of said amount by reason of (i) any judgment, decree or order of any court or administrative body of competent jurisdiction, or (ii) any settlement or compromise of any such claim effected by the Administrative Agent or such other Guaranteed Party with any such claimant (including the Borrower or a trustee in bankruptcy for the Borrower or the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of any of the Guaranteed Documents and the Guarantor shall be and remain liable to the Administrative Agent or such other Guaranteed Party for the amounts so repaid or recovered to the same extent as if such amount had never originally been paid to the Administrative Agent or such other Guaranteed Party.

SECTION 6. General Waivers; Additional Waivers.

(a) General Waivers. The Guarantor irrevocably waives notice of acceptance hereof, presentment, demand or action on delinquency, protest, the benefit of any statutes of limitations and, to the fullest extent permitted by law, any notice of any kind not provided for herein or under the other Guaranteed Documents, as well as any other act or thing, or omission or delay to do any other act or thing, or any other requirement that at any time any action be taken by any Person against the Borrower, the Guarantor, any other guarantor of the Guaranteed Obligations, or any other Person, which in any manner or to any extent might vary the risk of the Guarantor or which otherwise might operate to discharge the Guarantor from its obligations hereunder.

(b) Additional Waivers. Notwithstanding anything herein to the contrary, the Guarantor hereby absolutely, unconditionally, knowingly, and expressly waives, to the fullest extent permitted by law:

²² To be the date that is the second anniversary of the closing date.

(i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;

(ii) (1) notice of acceptance hereof; (2) notice of any Loans or other financial accommodations made or extended under the Guaranteed Documents or the creation or existence of any Guaranteed Obligations; (3) notice of the amount of the Guaranteed Obligations, subject, however, to the Guarantor's right to make inquiry of the Administrative Agent and the other Guaranteed Parties to ascertain the amount of the Guaranteed Obligations at any reasonable time; (4) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase the Guarantor's risk hereunder; (5) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Guaranteed Documents; (6) notice of any Default or Event of Default under the Credit Agreement or of any default or event of default under any other Guaranteed Document; and (7) all other notices (except if such notice is specifically required to be given to the Guarantor hereunder or under the Guaranteed Documents) and demands to which the Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the other Guaranteed Parties to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the other Guaranteed Parties has or may have against, the Company, the Subsidiary Guarantors or any third party; and the Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and paid in full in cash) of the Company or the Subsidiary Guarantors or by reason of the cessation from any cause whatsoever (other than full and final performance and payment in full in cash) of the liability of the Company or the Subsidiary Guarantors in respect thereof;

(iv) (a) any rights to assert against the Administrative Agent and the other Guaranteed Parties any defense (legal or equitable), set-off, counterclaim, or claim which the Guarantor may now or at any time hereafter have against the Company, the Subsidiary Guarantors or any other party liable to the Administrative Agent and the other Guaranteed Parties unless due to the gross negligence or willful misconduct of the Administrative Agent or such Guaranteed Party as determined by a court of competent jurisdiction in a final non-appealable judgment; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of sufficiency, validity, or enforceability of the Guaranteed Obligations; (c) any defense the Guarantor has to performance hereunder, and any right the Guarantor has to be exonerated, arising by reason of: (1) the impairment or suspension of the Administrative Agent's and the other Guaranteed Parties' rights or remedies against the other guarantor of the Guaranteed Obligations; (2) the alteration by the Administrative Agent and the other Guaranteed Parties of the Guaranteed Obligations; (3) any discharge of the obligations of the Company or the Subsidiary Guarantors to the Administrative Agent and the other Guaranteed Parties by operation of law as a result of the Administrative Agent's and the other Guaranteed Parties' intervention or omission; or (4) the acceptance by the Administrative Agent and the other Guaranteed Parties of anything in partial satisfaction of the Guaranteed Obligations; and (d) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the

operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to the Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Guaranteed Parties; or (b) any election by the Administrative Agent and the other Guaranteed Parties under the Bankruptcy Code, to limit the amount of its claim against the Guarantor.

SECTION 7. Subordination of Subrogation; Subordination of Intercompany Indebtedness.

(a) Subordination of Subrogation. Until the Termination Date, the Guarantor (i) shall have no right of subrogation with respect to such Guaranteed Obligations and shall not enforce any right or receive any payment by way of subrogation or otherwise take any action in respect of any other claim or cause of action the Guarantor may have against such Loan Party arising by reason of any payment or performance by the Guarantor pursuant to this Guaranty and (ii) waives any right to enforce any remedy which any of the Guaranteed Parties now have or may hereafter have against the Borrower, the Guarantor, any endorser or any guarantor of all or any part of the Guaranteed Obligations or any other Person. Should the Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, the Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off that the Guarantor may have to the payment in full in cash of the Guaranteed Obligations until the Guaranteed Obligations are paid in full in cash (other than Unliquidated Obligations) and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations are paid in full in cash (other than Unliquidated Obligations that have not yet arisen). The Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the other Guaranteed Parties and shall not limit or otherwise affect the Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the other Guaranteed Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 6(a). If any amount shall be paid to the Guarantor on account of or in respect of such subrogation rights or other claims or causes of action, the Guarantor shall hold such amount in trust for the benefit of the Guaranteed Parties and shall forthwith pay such amount to the Administrative Agent to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement or to be held by the Administrative Agent as collateral security for any Guaranteed Obligations existing.

(b) Subordination of Intercompany Indebtedness. The Guarantor agrees for the benefit of the Guaranteed Parties that any and all claims of the Guarantor against the Borrower, the Company, any Subsidiary Guarantor or any other Loan Party (each an "**Obligor**") with respect to all obligations and liabilities of any Obligor to the Guarantor of whatever description, including without limitation, any "Intercompany Indebtedness" (as hereinafter defined), any endorser, obligor or any other guarantor of all or any part of the Guaranteed Obligations, or against any of its properties (collectively, the "**Junior Claims**") shall be subordinate and junior in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations until the Termination Date; provided that, as long as no Event of Default has occurred and is continuing,

the Guarantor may receive payments of principal and interest from any Obligor with respect to any Junior Claim. Notwithstanding any right of the Guarantor to ask, demand, sue for, take or receive any payment from any Obligor, all rights, liens and security interests of the Guarantor, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Administrative Agent and the other Guaranteed Parties in those assets. Until the Termination Date, the Guarantor shall not have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Guaranteed Obligations shall have been fully and paid and satisfied (in cash) and all financing arrangements pursuant to any Guaranteed Document have been terminated. Until the Termination Date, if all or any part of the assets of any Obligor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of such Obligor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of any such Obligor is dissolved or if substantially all of the assets of any such Obligor are sold, then, and in any such event (such events being herein referred to as an “**Insolvency Event**”), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of any Obligor to the Guarantor (“**Intercompany Indebtedness**”) shall be paid or delivered directly to the Administrative Agent for application on any of the Guaranteed Obligations, due or to become due, until such Guaranteed Obligations shall have first been fully and paid and satisfied (in cash). Prior to the Termination Date, should any payment, distribution, security or instrument or proceeds thereof be received by the Guarantor upon or with respect to the Intercompany Indebtedness after any Insolvency Event and prior to the satisfaction of all of the Guaranteed Obligations and the termination of all the Guaranteed Documents, the Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Guaranteed Parties and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Guaranteed Parties, in precisely the form received (except for the endorsement or assignment of the Guarantor where necessary), for application to any of the Guaranteed Obligations, due or not due, and, until so delivered, the same shall be held in trust by the Guarantor as the property of the Guaranteed Parties. If the Guarantor fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Until the Termination Date, the Guarantor agrees that until the Guaranteed Obligations (other than the Unliquidated Obligations) have been paid in full (in cash) and satisfied and all the Guaranteed Documents have been terminated, the Guarantor will not assign or transfer to any Person (other than the Administrative Agent) any Junior Claim.

SECTION 8. Limitation of Liability of Guarantor’s General Partner. Subject to the exceptions and qualifications described below, the General Partner shall not be personally liable for the payment of the Obligations or the Guaranteed Obligations. Notwithstanding the foregoing: (a) if an Event of Default occurs, nothing contained herein shall in any way prevent or hinder the Administrative Agent or the Lenders in the pursuit or enforcement of any right, remedy or judgment against the Borrower or any other Loan Party, or any of their respective assets; and (b) the General Partner shall be fully liable to the Administrative Agent and the Lenders to the same extent that the General Partner would be liable absent the foregoing provisions of this Section for fraud or willful misrepresentation by the Borrower, the General Partner or the Guarantor (to the full extent of losses suffered by the Administrative Agent or any Lender by reason of such fraud or willful misrepresentations).

SECTION 9. Limitation of Guaranty. Notwithstanding any other provision of this Guaranty, it is the intent of the Guarantor and the Guaranteed Parties that in any Proceeding, the maximum amount guaranteed by the Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder (or any other obligations of the Guarantor to the Guaranteed Parties) shall not be subject to avoidance or be deemed unenforceable against the Guarantor in such Proceeding as a result of Applicable Law, including, without limitation, under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law applied in such Proceeding (such provisions, the “Avoidance Provisions”), whether by virtue of Section 544 of the Bankruptcy Code or otherwise. In determining the limitations, if any, on the amount of the Guarantor’s obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which the Guarantor may have under this Guaranty, any other agreement or applicable law shall be taken into account. Accordingly, to the extent that the obligations of the Guarantor hereunder would otherwise be subject to avoidance under the Avoidance Provisions, the maximum Guaranteed Obligations for which the Guarantor shall be liable hereunder shall be reduced to that amount which, as of the time any of the Guaranteed Obligations are deemed to have been incurred under the Avoidance Provisions, would not cause the obligations of the Guarantor hereunder (or any other obligations of the Guarantor to the Guaranteed Parties), to be subject to avoidance under the Avoidance Provisions. This Section is intended solely to preserve the rights of the Administrative Agent and the other Guaranteed Parties hereunder to the maximum extent that would not cause the obligations of the Guarantor hereunder to be subject to avoidance under the Avoidance Provisions, and neither the Guarantor or nor any other Person shall have any right or claim under this Section as against the Guaranteed Parties that would not otherwise be available to such Person under the Avoidance Provisions.

“**Proceeding**” means any of the following: (i) a voluntary or involuntary case concerning the Guarantor shall be commenced under the Bankruptcy Code; (ii) a custodian (as defined in such Bankruptcy Code or any other applicable bankruptcy laws) is appointed for, or takes charge of, all or any substantial part of the property of the Guarantor; (iii) any other proceeding under any Applicable Law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up or composition for adjustment of debts, whether now or hereafter in effect, is commenced relating to the Guarantor; (iv) the Guarantor is adjudicated insolvent or bankrupt; (v) any order of relief or other order approving any such case or proceeding is entered by a court of competent jurisdiction; (vi) the Guarantor makes a general assignment for the benefit of creditors; (vii) the Guarantor shall fail to pay, or shall state that it is unable to pay, or shall be unable to pay, its debts generally as they become due; (viii) the Guarantor shall call a meeting of its creditors with a view to arranging a composition or adjustment of its debts; (ix) the Guarantor shall by any act or failure to act indicate its consent to, approval of or acquiescence in any of the foregoing; or (x) any corporate action shall be taken by the Guarantor for the purpose of effecting any of the foregoing.

SECTION 10. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower or any Loan Party under the Credit Agreement or any other Guaranteed Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, the Guarantor, the Company, any Loan Party or any of their respective Affiliates or otherwise under Applicable Law, all such amounts otherwise subject to acceleration under the terms of the Credit

Agreement or any other Guaranteed Document shall nonetheless be payable by the Guarantor hereunder forthwith on demand by the Administrative Agent or the other Guaranteed Parties.

SECTION 11. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Section 13.1 of the Credit Agreement with respect to the Administrative Agent at its notice address therein and, with respect to the Guarantor, in the care of the Borrower at the address of the Borrower set forth in the Credit Agreement, or such other address or telecopy number as such party may hereafter specify for such purpose in accordance with the provisions of Section 13.1 of the Credit Agreement.

SECTION 12. No Waivers. No failure or delay by the Administrative Agent or any other Guaranteed Party in exercising any right, power or privilege hereunder or otherwise shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Credit Agreement and the other Guaranteed Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 13. Successors and Assigns. This Guaranty is for the benefit of the Administrative Agent and the other Guaranteed Parties and their respective successors and permitted assigns, (including, but not limited to, any holder of the Guaranteed Obligations) in whose favor the provisions of this Guaranty also shall inure, and each reference herein to the Guarantor shall be deemed to include the Guarantor's successors and assigns, upon whom this Guaranty also shall be binding. The Guaranteed Parties may, in accordance with the applicable provisions of the Guaranteed Documents, assign, transfer or sell any Guaranteed Obligation, or grant or sell participations in any Guaranteed Obligations, to any Person without the consent of, or notice to, the Guarantor and without releasing, discharging or modifying the Guarantor's obligations hereunder. The Guarantor hereby consents to the delivery by the Administrative Agent and any other Guaranteed Party to any Assignee or Participant (or any prospective Assignee or Participant) of any financial or other information regarding the Borrower or the Guarantor. The Guarantor shall not have any right to assign or transfer its rights or obligations hereunder without the prior written consent of the Administrative Agent, and any such assignment or transfer in violation of this Section 12 shall be null and void; and in the event of an assignment of any amounts payable under the Credit Agreement or the other Guaranteed Documents in accordance with the respective terms thereof, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty shall be binding upon the Guarantor and its successors and assigns.

SECTION 14. Changes in Writing. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by the Guarantor and the Administrative Agent, subject to Section 13.7 of the Credit Agreement.

SECTION 15. Governing Law; Jurisdiction.

(a) THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

(b) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN THE GUARANTOR AND ANY OF THE GUARANTEED PARTIES WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE GUARANTEED PARTIES, BY ACCEPTING THE BENEFITS HEREOF, AND THE GUARANTOR HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS GUARANTY, THE CREDIT AGREEMENT, THE NOTES, OR ANY OTHER GUARANTEED DOCUMENT OR WITH ANY COLLATERAL OR ANY LIEN OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE BORROWER, THE GUARANTOR, THE COMPANY, THE SUBSIDIARY GUARANTORS, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE GUARANTEED DOCUMENTS.

(c) THE GUARANTOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS GUARANTY OR ANY OTHER GUARANTEED DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL, NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY OR IN ANY OTHER GUARANTEED DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER GUARANTEED DOCUMENT AGAINST THE GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT OR ANY LENDER OR THE ENFORCEMENT BY THE

ADMINISTRATIVE AGENT OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(d) THE GUARANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE BORROWER AT ITS ADDRESS FOR NOTICES PROVIDED FOR IN THE CREDIT AGREEMENT. SHOULD THE GUARANTOR FAIL TO APPEAR OR ANSWER ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THIRTY (30) DAYS AFTER THE MAILING THEREOF, THE GUARANTOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST IT AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

(e) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER GUARANTEED DOCUMENTS, THE TERMINATION OF EACH GUARANTEED DOCUMENT AND THE TERMINATION OF THIS GUARANTY.

SECTION 16. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 17. Taxes; Expenses of Enforcement, Etc.

(a) Taxes. If any withholding or deduction from any payment to be made by the Guarantor hereunder is required in respect of any Taxes or any other deduction or withholding pursuant to any Applicable Law, then the Guarantor shall, to the extent the Guarantor would have been required pursuant to the Credit Agreement if it were a Loan Party, pay to the Administrative Agent and the Lenders such additional amount as will result in the receipt by the Administrative Agent and the Lenders of the full amount payable hereunder had such deduction or withholding not occurred or been required and indemnify the Administrative Agent and the Lenders for Taxes to the same extent that would be required pursuant to Section 3.10 of the Credit Agreement if the Guarantor were a Loan Party.

(b) The Guarantor agrees to reimburse the Guaranteed Parties for any reasonable costs and out-of-pocket expenses (including attorneys' fees) paid or incurred by any Guaranteed Party in connection with the collection and enforcement of the Guaranteed Documents, including without limitation, this Guaranty on terms consistent with Section 13.2 of the Credit Agreement as if such section were applicable to the Guarantor.

SECTION 18. Setoff. In addition to any rights now or hereafter granted under any of the other Guaranteed Documents or Applicable Law and not by way of limitation of any such rights, the Guarantor hereby authorizes each Guaranteed Party, each Affiliate of a Guaranteed Party and each Participant, at any time while an Event of Default exists, without any prior notice to the Guarantor or to any other Person, any such notice being hereby expressly waived, but in the case of a Guaranteed Party (other than the Administrative Agent), an Affiliate of a Guaranteed Party (other than the Administrative Agent) or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set-off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Guaranteed Party, an Affiliate of a Guaranteed Party or such Participant to or for the credit or the account of the Guarantor against and on account of any of the Guaranteed Obligations, although such obligations shall be contingent or unmatured. The Guarantor agrees, to the fullest extent permitted by Applicable Law, that any Participant may exercise rights of setoff or counterclaim and other rights with respect to its participation as fully as if such Participant were a direct creditor of the Guarantor in the amount of such participation.

SECTION 19. Financial Information. The Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower, the other Loan Parties and any and all endorsers and/or other guarantors of all or any part of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and the Guarantor hereby agrees that neither the Administrative Agent nor any other Guaranteed Parties shall have any duty to advise the Guarantor of information known to any of them regarding such condition or any such circumstances. In the event the Administrative Agent or any other Guaranteed Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to the Guarantor, such Guaranteed Party or the Administrative Agent shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Guaranteed Party or the Administrative Agent, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to the Guarantor.

SECTION 20. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Guaranty shall be prohibited by or invalid or unenforceable under any such Applicable Law, such provision shall be ineffective to the extent of such prohibition, unenforceability or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 21. Merger. This Guaranty represents the final agreement of the Guarantor with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Guarantor and the Administrative Agent or any other Guaranteed Party.

SECTION 22. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 23. Termination of Guarantors. This Guaranty shall remain in full force and effect with respect to the Guarantor until the Termination Date.

SECTION 24. Loan Accounts. The Administrative Agent and each other Guaranteed Party may maintain books and accounts setting forth the amounts of principal, interest and other sums paid and payable with respect to the Guaranteed Obligations arising under or in connection with the Guaranteed Documents, and in the case of any dispute relating to any of the outstanding amount, payment or receipt of any of such Guaranteed Obligations or otherwise, the entries in such books and accounts shall be binding on the Guarantors absent manifest error. The failure of the Administrative Agent or any other Guaranteed Party to maintain such books and accounts shall not in any way relieve or discharge the Guarantor of any of its obligations hereunder.

SECTION 25. Payments. All payments to be made by the Guarantor pursuant to this Guaranty shall be made in Dollars, in immediately available funds to the Administrative Agent at its Principal Office, not later than 1:00 p.m. Central time, on the date one Business Day after demand therefor.

SECTION 26. Limitation of Liability. None of the Administrative Agent, any other Guaranteed Party or any of their respective Related Parties shall have any liability with respect to, and the Guarantor hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by the Guarantor in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guaranteed Documents, or any of the transactions contemplated by this Guaranty or any of the other Guaranteed Documents. The Guarantor hereby waives, releases, and agrees not to sue the Administrative Agent, any other Guaranteed Party or any of their respective Related Parties for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guaranteed Documents, or any of the transactions contemplated by thereby.

SECTION 27. Electronic Delivery of Certain Information. The Guarantor acknowledges and agrees that information regarding the Guarantor may be delivered electronically pursuant to Section 9.5 of the Credit Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

CBL & ASSOCIATES LIMITED PARTNERSHIP

By: CBL Holdings I, Inc.,
its sole general partner

By: _____
Name:
Title:

Exhibit G - 17

Acknowledged and Agreed to:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name:
Title:

Exhibit G - 18

EXHIBIT H

[FORM OF] REIT BAD-ACT GUARANTY

THIS REIT BAD-ACT GUARANTY (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “**Guaranty**”) is made as of November __, 2021 by CBL & Associates Properties, Inc. (the “**REIT**”) in favor of Wells Fargo Bank, National Association, as Administrative Agent (the “**Administrative Agent**”), for its benefit and for the benefit of the Lenders under the Credit Agreement described below (the Administrative Agent and the Lenders, each individually a “**Guaranteed Party**” and collectively, the “**Guaranteed Parties**”). Unless otherwise defined herein, capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

WITNESSETH:

WHEREAS, CBL & Associates Holdco I, LLC (the “**Borrower**”), CBL & Associates Limited Partnership (the “**Parent**”), the REIT, the financial institutions party thereto from time to time (the “**Lenders**”) and the Administrative Agent are party to that certain Amended and Restated Credit Agreement dated as of November __, 2021 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), which Credit Agreement provides, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to or for the benefit of the Borrower;

WHEREAS, it is a condition precedent to the amendment and restatement of, and the continuation of the credit by the Lenders under, the Credit Agreement that the REIT agree to provide this Guaranty;

WHEREAS, the REIT is an Affiliate of the Borrower; and

WHEREAS, in consideration of the direct and indirect financial and other support and benefits that the Borrower has provided, and such direct and indirect financial and other support and benefits as the Borrower may in the future provide, to the REIT, which significantly facilitates the business operations of the Borrower and the REIT, and in order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement, and to make the Loans and the other financial accommodations to the Borrower, the REIT is willing to provide this Guaranty;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Representations, Warranties and Covenants. The REIT represents and warrants to the Administrative Agent and each other Guaranteed Party as of the date of this Guaranty, giving effect to the consummation of the transactions contemplated by the Loan Documents on the Effective Date, that:

(a) It is a corporation, duly organized, validly existing and in good standing under the jurisdiction of its incorporation, has the power and authority to own or lease its properties and to carry on its business as now being and hereafter proposed to be conducted and is duly qualified

and is in good standing as a domestic or foreign corporation, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect. REIT is not an Affected Financial Institution and as of the date hereof, has elected to be treated as a real estate investment trust under the Internal Revenue Code.

(b) It has the right and power, and has taken all necessary action required to authorize it, to execute, deliver and perform this Guaranty in accordance with its terms and to perform its obligations hereunder. This Guaranty has been duly executed and delivered by the duly authorized officers of the REIT and is a legal, valid and binding obligation of the REIT enforceable against the REIT in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein and as may be limited by equitable principles generally.

(c) The execution, delivery and performance of this Guaranty in accordance with its terms and the obligations hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any Governmental Approval or violate any Applicable Law (including all Environmental Laws) relating to the REIT; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the REIT, or any indenture, agreement or other instrument to which the REIT is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the REIT other than in favor of the Administrative Agent for its benefit and the benefit of the Guaranteed Parties, except, in each such instances, either individually or in the aggregate, that could not reasonably be expected to have a Material Adverse Effect. It is in compliance with each Governmental Approval and all other Applicable Laws (including, without limitation, Anti-Corruption Laws and Sanctions) relating to it except for non-compliances which, and Governmental Approvals the failure to possess which, could not, individually or in the aggregate, reasonably be expected to cause a Default or Event of Default or have a Material Adverse Effect.

In addition to the foregoing, and without limiting the ongoing reporting obligations of the REIT in Article IX of the Credit Agreement or the various Defaults in Article XI of the Credit Agreement which could result from actions by or impacting the REIT, the REIT hereby covenants that, so long as this Guaranty remains in effect until the Termination Date (as defined below), it will fully comply with those covenants and agreements of the REIT expressly set forth in Sections 8.1, 8.2, 8.7 and 8.10 of the Credit Agreement.

SECTION 2. The Guaranty.

(a) The REIT hereby absolutely, irrevocably and unconditionally guarantees and agrees it shall be fully liable to the Administrative Agent and the Lenders for fraud or willful misrepresentation by the Borrower, the Parent, or the New Notes Issuer, to the full extent of all costs, expenses, liabilities, claims and losses, including without limitation, attorneys' fees and expenses (collectively, "Losses") suffered by the Administrative Agent or any Lender by reason of any such fraud or willful misrepresentation in connection with the credit being extended

pursuant to the Credit Agreement (all of the foregoing being herein referred to collectively as the “**Guaranteed Obligations**”), provided, however, that the REIT’s maximum liability under this Guaranty and the maximum amount that may be asserted by the Guaranteed Parties under this Guaranty shall be limited to the sum of (i) \$175,000,000 (the “**Principal Liability Cap**”) plus (ii) any amounts due under Section 16 below in connection with enforcement of this Guaranty (clause (i) and (ii), collectively, the “**Guaranty Cap**”).

(b) The Principal Liability Cap set forth in subsection (a) above shall be reduced from time to time, on a dollar-for-dollar basis, as follows:

(i) The Principal Liability Cap shall be reduced by an amount equal to 100% of the first \$2,500,000 in principal amortization made by Borrower each calendar year pursuant to the requirements of Section 2.7(b) of the Credit Agreement, and shall further be reduced by 50% of the principal amortization payments made by Borrower each calendar year in excess of such first \$2,500,000 in principal amortization for such calendar year pursuant such Section 2.7(b) of the Credit Agreement;

(ii) The Principal Liability Cap shall be reduced by an amount equal to 100% of the amount of Excess Cash Flow that is applied to repay the principal amount of the Term Loans in accordance with Section 2.8(b)(iii) of the Credit Agreement, if any;

(iii) The Principal Liability Cap shall be reduced by an amount equal to 150% of the amount of any voluntary principal amortization payments made by the Borrower under Section 2.8(a) of the Credit Agreement (which amounts, for clarity, shall not include any amortization required to be paid under Section 2.7(b), Section 2.8(b)(i) (other than to the limited extent set forth in clause (iv) below), Section 2.8(b)(ii) or Section 2.8(b)(iv) of the Credit Agreement); and

(iv) The Principal Liability Cap shall be reduced by an amount equal to 100% of the amount by which the Net Cash Proceeds applied to repay the Loan pursuant to Section 2.8(b)(i) [i.e., from the sale of a Collateral Property] exceeds the applicable Appraised Value of the Collateral Property being sold, with such Appraised Value determined based upon the Appraisals obtained by Administrative Agent prior to the Effective Date.

(c) The REIT agrees that it shall forthwith on demand pay any such amounts at the place and in the manner specified in the Credit Agreement or the relevant other Loan Document, as the case may be. The REIT hereby agrees that this Guaranty is an absolute, irrevocable and unconditional guaranty of payment and is not a guaranty of collection, and a debt of the REIT for its own account. Accordingly, the Guaranteed Parties shall not be obligated or required before enforcing this Guaranty against the REIT: (i) to pursue any right or remedy the Guaranteed Parties may have against the Borrower, any other Loan Party or any other Person or commence any suit or other proceeding against the Borrower, any other Loan Party or any other Person in any court or other tribunal; (ii) to make any claim in a liquidation or bankruptcy of the Borrower, any other Loan Party or any other Person; or (iii) to make demand of the Borrower, any other Loan Party or any other Person or to enforce or seek to enforce or realize upon any collateral security held by the Guaranteed Parties which may secure any of the Guaranteed Obligations; provided, however, the

maximum claim or demand that may be asserted by the Guaranteed Parties against the REIT (whether in a Proceeding (as defined below) or otherwise) shall be the Guaranty Cap (as may be reduced pursuant to this Section 2).

SECTION 3. Guaranty Unconditional. The REIT guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the documents evidencing the same, regardless of any Applicable Law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Guaranteed Parties with respect thereto. The obligations of the REIT hereunder shall be unconditional, irrevocable and absolute, and, without limiting the generality of the foregoing, shall remain in full force and effect without regard to, and shall not be released, discharged, suspended, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation, the following (whether or not the REIT consents thereto or has notice thereof):

(i) any extension, renewal, settlement, indulgence, compromise, consent to departure from, waiver or release of or with respect to the Guaranteed Obligations or any part thereof or any of the Credit Agreement, any other Loan Document, or any other document, instrument or agreement evidencing or relating to any Guaranteed Obligations (the “**Guaranteed Documents**”), or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations, whether (in any such case) by operation of law or otherwise, or any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto, or with respect to any obligation of any other guarantor of any of the Guaranteed Obligations;

(ii) any modification or amendment of or supplement to, or deletion from, or any other action or inaction under or in respect of, any Guaranteed Document or any assignment or transfer of any Guaranteed Document, including, without limitation, any such amendment which may (x) increase the amount of, or the interest rates applicable to, or change the due date of, any of the Guaranteed Obligations guaranteed hereby, or (y) change the time, place or manner of payment of all or any portion of the Guaranteed Obligations;

(iii) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof;

(iv) any change in the corporate, partnership, limited liability company or other existence, structure or ownership of the Borrower, the Parent or any other guarantor of any of the Guaranteed Obligations, or any insolvency, bankruptcy, reorganization, composition, adjustment, dissolution, liquidation or other similar proceeding affecting the Borrower, the Parent, any other Loan Party or any other Person, or any of their respective assets or any resulting release or discharge of any obligation of the Borrower, the Parent or any other Loan Party, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding;

(v) the existence of any defense, claim, setoff, counterclaim or other rights (other than payment and performance in full) which the REIT may have at any time or be asserted by the REIT or any Loan Party or any other Person against the Borrower, the REIT, any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any other Guaranteed Party or any other Person, whether in connection herewith or in connection with any unrelated transactions, provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(vi) any lack of enforceability or validity of the Guaranteed Obligations or any part thereof or any lack of genuineness, enforceability or validity of any Guaranteed Document or any assignment or transfer of any Guaranteed Document, or any other invalidity or unenforceability relating to or against the Borrower, the REIT or any other guarantor of any of the Guaranteed Obligations, for any reason related to the Credit Agreement or any other Guaranteed Document, or any provision of applicable law, decree, order or regulation purporting to prohibit the payment by the Borrower, the REIT or any other guarantor of the Guaranteed Obligations, of any of the Guaranteed Obligations or otherwise affecting any term of any of the Guaranteed Obligations;

(vii) the election by, or on behalf of, any one or more of the Guaranteed Parties, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (or any successor statute, the “**Bankruptcy Code**”), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(viii) any furnishing to any of the Guaranteed Parties or any security for any of the Guaranteed Obligations, or any sale, exchange, release or surrender of, or realization on, any collateral securing any of the Guaranteed Obligations;

(ix) any settlement or compromise of any of the Guaranteed Obligations, any security therefor, or any liability of any other party with respect to any of the Guaranteed Obligations, or any subordination of the payment of any of the Guaranteed Obligations to the payment of any other liability of the Borrower or any other Loan Party;

(x) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code;

(xi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims of the Administrative Agent or the other Guaranteed Parties for repayment of all or any part of the Guaranteed Obligations;

(xii) the failure of any other guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof;

(xiii) any act or failure to act by any Loan Party or any other Person which may adversely affect the REIT’s subrogation rights, if any, against any Loan Party or any other Person to recover payments made under this Guaranty;

(xiv) any nonperfection or impairment of any security interest or other Lien on any collateral, if any, securing in any way any of the Guaranteed Obligations;

(xv) any application of sums paid by any Loan Party or any other Person with respect to the liabilities of any Loan Party to any of the Guaranteed Parties, regardless of what liabilities of the Borrower remain unpaid;

(xvi) any defect, limitation or insufficiency in the borrowing powers of the Borrower or in the exercise thereof;

(xvii) any statement, representation or warranty made or deemed made by or on behalf of any Loan Party under any Guaranteed Document, any amendment hereto or thereto, proves to have been incorrect or misleading in any respect; or

(xviii) any other act or omission to act or delay of any kind by the Borrower, the REIT, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any other Guaranteed Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 3, constitute a legal or equitable discharge of or a defense available to the REIT's obligations hereunder (other than payment and performance in full) or otherwise reduce, release, prejudice or extinguish its liability under this Guaranty.

The Guaranteed Parties may, at any time and from time to time, without the consent of, or notice to, the REIT, and without discharging any REIT from its obligations hereunder, take any and all actions described in this Section 3 and may otherwise: (a) amend, modify, alter or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations or changing the interest rate that may accrue on any of the Guaranteed Obligations; (b) amend, modify, alter or supplement any Guaranteed Document; (c) sell, exchange, release or otherwise deal with all, or any part, of any collateral securing any of the Guaranteed Obligations; (d) release any Loan Party or other Person liable in any manner for the payment or collection of any of the Guaranteed Obligations; (e) exercise, or refrain from exercising, any rights against any Loan Party or any other Person; and (f) apply any sum, by whomsoever paid or however realized, to the Guaranteed Obligations in such order as the Guaranteed Parties shall elect.

SECTION 4. Discharge; Termination; Reinstatement In Certain Circumstances.

(a) The REIT's obligations hereunder shall remain in full force and effect until the earlier of (such date, the "**Termination Date**") (i) the date on which the Aggregate Outstanding Balance is less than or equal to \$650,000,000, (ii) at any time after November [], 2023,²³ the date on which the Debt Yield Ratio, expressed as a percentage, is greater than 15.0%, (iii) the date on which all Guaranteed Obligations shall have been paid in full in cash (other than Unliquidated Obligations that have not yet arisen), and (iv) the date on which each Guaranteed Document shall have been terminated or cancelled in accordance with its terms, at which time, subject to all the foregoing conditions, the guarantees made hereunder shall automatically terminate. As used herein, "**Unliquidated Obligations**" means at any time, any Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Obligation that is: (A) any obligation (including any guarantee) under the Credit Agreement that is contingent in nature at

²³ To be the date that is the second anniversary of the closing date.

such time; or (B) any obligation under the Credit Agreement to provide collateral to secure any of the foregoing types of obligations.

(b) If claim is ever made on the Administrative Agent or any other Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any Guaranteed Obligations, and the Administrative Agent or such other Guaranteed Party repays all or part of said amount by reason of (i) any judgment, decree or order of any court or administrative body of competent jurisdiction, or (ii) any settlement or compromise of any such claim effected by the Administrative Agent or such other Guaranteed Party with any such claimant (including the Borrower or a trustee in bankruptcy for the Borrower or the REIT), then and in such event the REIT agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of any of the Guaranteed Documents and the REIT shall be and remain liable to the Administrative Agent or such other Guaranteed Party for the amounts so repaid or recovered to the same extent as if such amount had never originally been paid to the Administrative Agent or such other Guaranteed Party.

SECTION 5. General Waivers; Additional Waivers.

(a) General Waivers. The REIT irrevocably waives notice of acceptance hereof, presentment, demand or action on delinquency, protest, the benefit of any statutes of limitations and, to the fullest extent permitted by law, any notice of any kind not provided for herein or under the other Guaranteed Documents, as well as any other act or thing, or omission or delay to do any other act or thing, or any other requirement that at any time any action be taken by any Person against the Borrower, the REIT, any other guarantor of the Guaranteed Obligations, or any other Person, which in any manner or to any extent might vary the risk of the REIT or which otherwise might operate to discharge the REIT from its obligations hereunder.

(b) Additional Waivers. Notwithstanding anything herein to the contrary, the REIT hereby absolutely, unconditionally, knowingly, and expressly waives, to the fullest extent permitted by law:

(i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;

(ii) (1) notice of acceptance hereof; (2) notice of any Loans or other financial accommodations made or extended under the Guaranteed Documents or the creation or existence of any Guaranteed Obligations; (3) notice of the amount of the Guaranteed Obligations, subject, however, to the REIT's right to make inquiry of the Administrative Agent and the other Guaranteed Parties to ascertain the amount of the Guaranteed Obligations at any reasonable time; (4) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase the REIT's risk hereunder; (5) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Guaranteed Documents; (6) notice of any Default or Event of Default under the Credit Agreement or of any default or event of default under any other Guaranteed Document; and (7) all other notices (except if such notice is specifically required to be given to the REIT hereunder or under the Guaranteed Documents) and demands to which the REIT might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the other Guaranteed Parties to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the other Guaranteed Parties has or may have against, the Parent, the Subsidiary Guarantors or any third party; and the REIT further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and paid in full in cash) of the Parent or the Subsidiary Guarantors or by reason of the cessation from any cause whatsoever (other than full and final performance and payment in full in cash) of the liability of the Parent or the Subsidiary Guarantors in respect thereof;

(iv) (a) any rights to assert against the Administrative Agent and the other Guaranteed Parties any defense (legal or equitable), set-off, counterclaim, or claim which the REIT may now or at any time hereafter have against the Parent, the Subsidiary Guarantors or any other party liable to the Administrative Agent and the other Guaranteed Parties unless due to the gross negligence or willful misconduct of the Administrative Agent or such Guaranteed Party as determined by a court of competent jurisdiction in a final non-appealable judgment; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of sufficiency, validity, or enforceability of the Guaranteed Obligations; (c) any defense the REIT has to performance hereunder, and any right the REIT has to be exonerated, arising by reason of: (1) the impairment or suspension of the Administrative Agent's and the other Guaranteed Parties' rights or remedies against the other guarantor of the Guaranteed Obligations; (2) the alteration by the Administrative Agent and the other Guaranteed Parties of the Guaranteed Obligations; (3) any discharge of the obligations of the Parent or the Subsidiary Guarantors to the Administrative Agent and the other Guaranteed Parties by operation of law as a result of the Administrative Agent's and the other Guaranteed Parties' intervention or omission; or (4) the acceptance by the Administrative Agent and the other Guaranteed Parties of anything in partial satisfaction of the Guaranteed Obligations; and (d) the benefit of any statute of limitations affecting the REIT's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to the REIT's liability hereunder; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Guaranteed Parties; or (b) any election by the Administrative Agent and the other Guaranteed Parties under the Bankruptcy Code, to limit the amount of its claim against the REIT.

SECTION 6. Subordination of Subrogation; Subordination of Intercompany Indebtedness.

(a) Subordination of Subrogation. Until the Termination Date, the REIT (i) shall have no right of subrogation with respect to such Guaranteed Obligations and shall not enforce any right or receive any payment by way of subrogation or otherwise take any action in respect of any other claim or cause of action the REIT may have against such Loan Party arising by reason of any payment or performance by the REIT pursuant to this Guaranty and (ii) waives any right to enforce any remedy which any of the Guaranteed Parties now have or may hereafter have against the

Borrower, the REIT, any endorser or any guarantor of all or any part of the Guaranteed Obligations or any other Person. Should the REIT have the right, notwithstanding the foregoing, to exercise its subrogation rights, the REIT hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off that the REIT may have to the payment in full in cash of the Guaranteed Obligations until the Guaranteed Obligations are paid in full in cash (other than Unliquidated Obligations) and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations are paid in full in cash (other than Unliquidated Obligations that have not yet arisen). The REIT acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the other Guaranteed Parties and shall not limit or otherwise affect the REIT's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the other Guaranteed Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 6(a). If any amount shall be paid to the REIT on account of or in respect of such subrogation rights or other claims or causes of action, the REIT shall hold such amount in trust for the benefit of the Guaranteed Parties and shall forthwith pay such amount to the Administrative Agent to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement or to be held by the Administrative Agent as collateral security for any Guaranteed Obligations existing.

(b) Subordination of Intercompany Indebtedness. The REIT agrees for the benefit of the Guaranteed Parties that any and all claims of the REIT against the Borrower, the Parent, any Subsidiary Guarantor or any other Loan Party (each an "**Obligor**") with respect to all obligations and liabilities of any Obligor to the REIT of whatever description, including without limitation, any "Intercompany Indebtedness" (as hereinafter defined), any endorser, obligor or any other guarantor of all or any part of the Guaranteed Obligations, or against any of its properties (collectively, the "**Junior Claims**") shall be subordinate and junior in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations until the Termination Date; provided that, as long as no Event of Default has occurred and is continuing, the REIT may receive payments of principal and interest from any Obligor with respect to any Junior Claim. Notwithstanding any right of the REIT to ask, demand, sue for, take or receive any payment from any Obligor, all rights, liens and security interests of the REIT, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Administrative Agent and the other Guaranteed Parties in those assets. Until the Termination Date, the REIT shall not have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Guaranteed Obligations shall have been fully and paid and satisfied (in cash) and all financing arrangements pursuant to any Guaranteed Document have been terminated. Until the Termination Date, if all or any part of the assets of any Obligor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of such Obligor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of any such Obligor is dissolved or if substantially all of the assets of any such Obligor are sold, then, and in any such event (such events being herein referred to as an "**Insolvency Event**"), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of any Obligor to the REIT ("**Intercompany Indebtedness**") shall be paid or delivered directly to the Administrative Agent for application on any of the

Guaranteed Obligations, due or to become due, until such Guaranteed Obligations shall have first been fully and paid and satisfied (in cash). Prior to the Termination Date, should any payment, distribution, security or instrument or proceeds thereof be received by the REIT upon or with respect to the Intercompany Indebtedness after any Insolvency Event and prior to the satisfaction of all of the Guaranteed Obligations and the termination of all the Guaranteed Documents, the REIT shall receive and hold the same in trust, as trustee, for the benefit of the Guaranteed Parties and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Guaranteed Parties, in precisely the form received (except for the endorsement or assignment of the REIT where necessary), for application to any of the Guaranteed Obligations, due or not due, and, until so delivered, the same shall be held in trust by the REIT as the property of the Guaranteed Parties. If the REIT fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Until the Termination Date, the REIT agrees that until the Guaranteed Obligations (other than the Unliquidated Obligations) have been paid in full (in cash) and satisfied and all the Guaranteed Documents have been terminated, the REIT will not assign or transfer to any Person (other than the Administrative Agent) any Junior Claim.

SECTION 7. [Reserved].

SECTION 8. Limitation of Guaranty. Notwithstanding any other provision of this Guaranty, it is the intent of the REIT and the Guaranteed Parties that in any Proceeding, the maximum amount guaranteed by the REIT hereunder shall be limited to the extent, if any, required so that its obligations hereunder (or any other obligations of the REIT to the Guaranteed Parties) shall not be subject to avoidance or be deemed unenforceable against the REIT in such Proceeding as a result of Applicable Law, including, without limitation, under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law applied in such Proceeding (such provisions, the “Avoidance Provisions”), whether by virtue of Section 544 of the Bankruptcy Code or otherwise. In determining the limitations, if any, on the amount of the REIT’s obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which the REIT may have under this Guaranty, any other agreement or applicable law shall be taken into account. Accordingly, to the extent that the obligations of the REIT hereunder would otherwise be subject to avoidance under the Avoidance Provisions, the maximum Guaranteed Obligations for which the REIT shall be liable hereunder shall be reduced to that amount which, as of the time any of the Guaranteed Obligations are deemed to have been incurred under the Avoidance Provisions, would not cause the obligations of the REIT hereunder (or any other obligations of the REIT to the Guaranteed Parties), to be subject to avoidance under the Avoidance Provisions. This Section is intended solely to preserve the rights of the Administrative Agent and the other Guaranteed Parties hereunder to the maximum extent that would not cause the obligations of the REIT hereunder to be subject to avoidance under the Avoidance Provisions, and neither the REIT or nor any other Person shall have any right or claim under this Section as against the Guaranteed Parties that would not otherwise be available to such Person under the Avoidance Provisions.

“**Proceeding**” means any of the following: (i) a voluntary or involuntary case concerning the REIT shall be commenced under the Bankruptcy Code; (ii) a custodian (as defined in such Bankruptcy Code or any other applicable bankruptcy laws) is appointed for, or takes charge of, all or any

substantial part of the property of the REIT; (iii) any other proceeding under any Applicable Law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up or composition for adjustment of debts, whether now or hereafter in effect, is commenced relating to the REIT; (iv) the REIT is adjudicated insolvent or bankrupt; (v) any order of relief or other order approving any such case or proceeding is entered by a court of competent jurisdiction; (vi) the REIT makes a general assignment for the benefit of creditors; (vii) the REIT shall fail to pay, or shall state that it is unable to pay, or shall be unable to pay, its debts generally as they become due; (viii) the REIT shall call a meeting of its creditors with a view to arranging a composition or adjustment of its debts; (ix) the REIT shall by any act or failure to act indicate its consent to, approval of or acquiescence in any of the foregoing; or (x) any corporate action shall be taken by the REIT for the purpose of effecting any of the foregoing.

SECTION 9. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Borrower or any Loan Party under the Credit Agreement or any other Guaranteed Document is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, the REIT, the Parent, any Loan Party or any of their respective Affiliates or otherwise under Applicable Law, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement or any other Guaranteed Document shall nonetheless be payable by the REIT hereunder forthwith on demand by the Administrative Agent or the other Guaranteed Parties.

SECTION 10. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Section 13.1 of the Credit Agreement with respect to the Administrative Agent at its notice address therein and, with respect to the REIT, in the care of the Borrower at the address of the Borrower set forth in the Credit Agreement, or such other address or telecopy number as such party may hereafter specify for such purpose in accordance with the provisions of Section 13.1 of the Credit Agreement.

SECTION 11. No Waivers. No failure or delay by the Administrative Agent or any other Guaranteed Party in exercising any right, power or privilege hereunder or otherwise shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Credit Agreement and the other Guaranteed Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 12. Successors and Assigns. This Guaranty is for the benefit of the Administrative Agent and the other Guaranteed Parties and their respective successors and permitted assigns, (including, but not limited to, any holder of the Guaranteed Obligations) in whose favor the provisions of this Guaranty also shall inure, and each reference herein to the REIT shall be deemed to include the REIT's successors and assigns, upon whom this Guaranty also shall be binding. The Guaranteed Parties may, in accordance with the applicable provisions of the Guaranteed Documents, assign, transfer or sell any Guaranteed Obligation, or grant or sell participations in any Guaranteed Obligations, to any Person without the consent of, or notice to, the REIT and without releasing, discharging or modifying the REIT's obligations hereunder. The REIT hereby consents to the delivery by the Administrative Agent and any other Guaranteed Party to any Assignee or Participant (or any prospective Assignee or Participant) of any financial or other information regarding the Borrower or the REIT. The REIT shall not have any right to assign or transfer its rights or obligations hereunder without the prior written consent of the

Administrative Agent, and any such assignment or transfer in violation of this Section 12 shall be null and void; and in the event of an assignment of any amounts payable under the Credit Agreement or the other Guaranteed Documents in accordance with the respective terms thereof, the rights hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty shall be binding upon the REIT and its successors and assigns.

SECTION 13. Changes in Writing. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by the REIT and the Administrative Agent, subject to Section 13.7 of the Credit Agreement.

SECTION 14. Governing Law; Jurisdiction.

(a) THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

(b) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN THE REIT AND ANY OF THE GUARANTEED PARTIES WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE GUARANTEED PARTIES, BY ACCEPTING THE BENEFITS HEREOF, AND THE REIT HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS GUARANTY, THE CREDIT AGREEMENT, THE NOTES, OR ANY OTHER GUARANTEED DOCUMENT OR WITH ANY COLLATERAL OR ANY LIEN OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE BORROWER, THE REIT, THE PARENT, THE SUBSIDIARY GUARANTORS, THE ADMINISTRATIVE AGENT, OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE GUARANTEED DOCUMENTS.

(c) THE REIT IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS GUARANTY OR ANY OTHER GUARANTEED DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE

LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL, NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY OR IN ANY OTHER GUARANTEED DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER GUARANTEED DOCUMENT AGAINST THE REIT OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT, OR ANY LENDER OR THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT, OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(d) THE REIT HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE BORROWER AT ITS ADDRESS FOR NOTICES PROVIDED FOR IN THE CREDIT AGREEMENT. SHOULD THE REIT FAIL TO APPEAR OR ANSWER ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THIRTY (30) DAYS AFTER THE MAILING THEREOF, THE REIT SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST IT AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

(e) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER GUARANTEED DOCUMENTS, THE TERMINATION OF EACH GUARANTEED DOCUMENT AND THE TERMINATION OF THIS GUARANTY.

SECTION 15. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 16. Taxes; Expenses of Enforcement, Etc.

(a) Taxes. If any withholding or deduction from any payment to be made by the REIT hereunder is required in respect of any Taxes or any other deduction or withholding pursuant to

any Applicable Law, then the REIT shall, to the extent the REIT would have been required pursuant to the Credit Agreement if it were a Loan Party, pay to the Administrative Agent and the Lenders such additional amount as will result in the receipt by the Administrative Agent and the Lenders of the full amount payable hereunder had such deduction or withholding not occurred or been required and indemnify the Administrative Agent and the Lenders for Taxes to the same extent that would be required pursuant to Section 3.10 of the Credit Agreement if the REIT were a Loan Party.

(b) The REIT agrees to reimburse the Guaranteed Parties for any reasonable costs and out-of-pocket expenses (including attorneys' fees) paid or incurred by any Guaranteed Party in connection with the collection and enforcement of the Guaranteed Documents, including without limitation, this Guaranty on terms consistent with Section 13.2 of the Credit Agreement as if such section were applicable to the REIT.

SECTION 17. Setoff. In addition to any rights now or hereafter granted under any of the other Guaranteed Documents or Applicable Law and not by way of limitation of any such rights, the REIT hereby authorizes each Guaranteed Party, each Affiliate of a Guaranteed Party and each Participant, at any time while an Event of Default exists, without any prior notice to the REIT or to any other Person, any such notice being hereby expressly waived, but in the case of a Guaranteed Party (other than the Administrative Agent), an Affiliate of a Guaranteed Party (other than the Administrative Agent) or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set-off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Guaranteed Party, an Affiliate of a Guaranteed Party or such Participant to or for the credit or the account of the REIT against and on account of any of the Guaranteed Obligations, although such obligations shall be contingent or unmatured. The REIT agrees, to the fullest extent permitted by Applicable Law, that any Participant may exercise rights of setoff or counterclaim and other rights with respect to its participation as fully as if such Participant were a direct creditor of the REIT in the amount of such participation.

SECTION 18. Financial Information. The REIT hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower, the other Loan Parties and any and all endorsers and/or other guarantors of all or any part of the Guaranteed Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, and the nature, scope and extent of the risks that such REIT assumes and incurs hereunder, and the REIT hereby agrees that neither the Administrative Agent nor any other Guaranteed Parties shall have any duty to advise the REIT of information known to any of them regarding such condition or any such circumstances. In the event the Administrative Agent or any other Guaranteed Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to the REIT, such Guaranteed Party or the Administrative Agent shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Guaranteed Party or the Administrative Agent, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to the REIT.

SECTION 19. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Guaranty shall be prohibited by or invalid or unenforceable under any such Applicable Law, such provision shall be ineffective to the extent of such prohibition, unenforceability or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 20. Merger. This Guaranty represents the final agreement of the REIT with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the REIT and the Administrative Agent or any other Guaranteed Party.

SECTION 21. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 22. Termination of Guarantors. This Guaranty shall remain in full force and effect with respect to the REIT until the Termination Date.

SECTION 23. Loan Accounts. The Administrative Agent and each other Guaranteed Party may maintain books and accounts setting forth the amounts of principal, interest and other sums paid and payable with respect to the Guaranteed Obligations arising under or in connection with the Guaranteed Documents, and in the case of any dispute relating to any of the outstanding amount, payment or receipt of any of such Guaranteed Obligations or otherwise, the entries in such books and accounts shall be binding on the REIT absent manifest error. The failure of the Administrative Agent or any other Guaranteed Party to maintain such books and accounts shall not in any way relieve or discharge the REIT of any of its obligations hereunder.

SECTION 24. Payments. All payments to be made by the REIT pursuant to this Guaranty shall be made in Dollars, in immediately available funds to the Administrative Agent at its Principal Office, not later than 1:00 p.m. Central time, on the date one Business Day after demand therefor.

SECTION 25. Limitation of Liability. None of the Administrative Agent, any other Guaranteed Party or any of their respective Related Parties shall have any liability with respect to, and the REIT hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by the REIT in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guaranteed Documents, or any of the transactions contemplated by this Guaranty or any of the other Guaranteed Documents. The REIT hereby waives, releases, and agrees not to sue the Administrative Agent, any other Guaranteed Party or any of their respective Related Parties for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guaranteed Documents, or any of the transactions contemplated by thereby.

SECTION 26. Electronic Delivery of Certain Information. The REIT acknowledges and agrees that information regarding the REIT may be delivered electronically pursuant to Section 9.5 of the Credit Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the REIT has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

CBL & ASSOCIATES PROPERTIES, INC.

By: _____
Name: _____
Title: _____

Exhibit H - 16

Acknowledged and Agreed to:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name:
Title:

NAI-1518871885v8

Exhibit H - 17

EXHIBIT I

[Reserved]

Exhibit I - 1

EXHIBIT J

FORM OF TERM NOTE

CBL & ASSOCIATES HOLDCO I, LLC

[\$_____]

[_____] , 2021

FOR VALUE RECEIVED, the undersigned, CBL & Associates Holdco I, LLC, a Delaware limited liability company (the “**Borrower**”) hereby unconditionally promises to pay to the order of [_____] or its registered assigns (the “**Lender**”), in care of Wells Fargo Bank, National Association, as Administrative Agent (the “**Administrative Agent**”), at the office of the Administrative Agent located at Wells Fargo Bank, National Association, 10 South Wacker Drive, 32nd Floor, Chicago, Illinois 60606, or at such other address as may be specified by the Administrative Agent to the Borrower in accordance with the terms of the Credit Agreement (defined below), the principal sum of [_____] DOLLARS (\$[_____]), or such lesser amount as may be the then outstanding and unpaid balance of all Term Loans made by the Lender to the Borrower pursuant to, and in accordance with the terms of, the Credit Agreement.

The Borrower further agrees to pay interest at said office on the unpaid principal amount owing hereunder from time to time on the dates and at the rates and at the times specified in the Credit Agreement.

This Term Note (this “**Note**”) is one of the “Term Notes” referred to in that certain Amended and Restated Credit Agreement dated as of [_____] , 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among the Borrower, the financial institutions party thereto from time to time and their assignees under Section 13.6 thereof, the Administrative Agent, and the other parties thereto from time to time, and is subject to, and entitled to, all provisions and benefits thereof. Capitalized terms used herein and not defined herein shall have the respective meanings given to such terms in the Credit Agreement. The Credit Agreement, among other things, (a) provides for the making of Term Loans by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time outstanding the Dollar amount first above mentioned, (b) permits the prepayment of the Loans by the Borrower subject to certain terms and conditions and (c) provides for the acceleration of the Term Loans upon the occurrence of certain specified events.

The Borrower hereby waives presentment, demand, protest and notice of any kind. No failure to exercise, and no delay in exercising any rights hereunder on the part of the holder hereof shall operate as a waiver of such rights.

Time is of the essence for this Note.

Each of CBL & Associates Limited Partnership, a Delaware limited partnership, its successors and assigns (the “**Parent**”) and CBL & Associates Properties, Inc., a corporation incorporated under the Laws of Delaware, its successors and assigns (the “**REIT**”) shall not be personally liable for the payment of this Note except to the extent set forth in Section 13.22 of the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Term Note as of the date written above.

BORROWER:

CBL & ASSOCIATES HOLDCO I, LLC

By: CBL & Associates Limited Partnership,
[its sole member]

By: CBL Holdings I, Inc.,
its sole general partner

By: _____
Name: _____
Its: _____

EXHIBIT K

[FORM OF] AFFILIATED LENDER ASSIGNMENT AND ASSUMPTION AGREEMENT

This Affiliated Lender Assignment and Assumption Agreement (the “**Affiliated Lender Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [the] [each]²⁴ Assignor identified in item 1 below ([the][each, an] “**Assignor**”) and [the][each]²⁵ Assignee identified in item 2 below ([the][each, an] “**Assignee**”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]²⁶ hereunder are several and not joint.]²⁷ Capitalized terms used but not defined herein shall have the meanings given to them in the Amended and Restated Credit Agreement identified below (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Affiliated Lender Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the] [each] Assignor hereby irrevocably sells, delegates and assigns to [the Assignee][the respective Assignees], and [the] [each] Assignee hereby irrevocably purchases and assumes from [the Assignor] [the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s] [the respective Assignors’] rights and obligations in [its capacity as a Lender] [their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor] [the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)] [the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “**Assigned Interest**”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Affiliated Lender Assignment and Assumption, without representation or warranty by [the][any] Assignor.

²⁴ For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

²⁵ For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

²⁶ Select as appropriate.

²⁷ Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: _____, ([an Affiliated Lender][a Non-Debt Fund Affiliate])
2. Assignee[s]: _____, ([an Affiliated Lender][a Non-Debt Fund Affiliate])
3. Borrower: CBL & Associates Holdco I, LLC
4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Amended and Restated Credit Agreement
5. Credit Agreement: The Amended and Restated Credit Agreement dated as of [____], 2021 among CBL & Associates Holdco I, LLC, CBL & Associates Properties, Inc., solely for the limited purposes set forth therein, CBL & Associates Limited Partnership, solely for the limited purposes set forth therein, the Lenders parties thereto, Wells Fargo Bank, National Association, as Administrative Agent, and the other agents parties thereto
6. Assigned Interest[s]:

Assignor[s] ²⁸	Assignee[s] ²⁹	Aggregate Amount of Commitment/Loans for all Lenders ³⁰	Amount of Commitment/Loans Assigned ⁸	Percentage Assigned of Commitment/Loans ³¹	CUSIP Number
		\$_[_____]	\$_[_____]	%	

[7. Trade Date: _____] ³²

Effective Date: _____, 20____ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

²⁸ List each Assignor, as appropriate.

²⁹ List each Assignee, as appropriate.

³⁰ Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

³¹ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

³² To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Affiliated Lender Assignment and Assumption are hereby agreed to:

ASSIGNOR[S]

[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

ASSIGNEE[S]

[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

[Consented to and] Accepted:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____
Name:
Title:

[Consented to:]³³

CBL & ASSOCIATES HOLDCO I, LLC

By: _____
Name:
Title:

³³ To be added only if the consent of the Borrower is required by the terms of the Amended and Restated Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The] [Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the] [the relevant] Assigned Interest, (ii) [the] [such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary including to obtain such consents, if any, as are required under the Credit Agreement, to execute and deliver this Affiliated Lender Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, or any collateral thereunder, (iii) the financial condition of the Borrower, the Parent, the Company, any of the their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, the Parent, the Company, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Affiliated Lender Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements of an Eligible Assignee under the Credit Agreement (subject to such consents, if any, as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the] [the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 9.1 and Section 9.2 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Affiliated Lender Assignment and Assumption and to purchase [the] [such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Affiliated Lender Assignment and Assumption and to purchase [the] [such] Assigned Interest, (vii) attached to the Affiliated Lender Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the] [such] Assignee, (viii) it is an Affiliated Lender, as such term is defined in the Credit Agreement, (ix) after giving pro forma effect to the purchase, assumption and assignment of Term Loans pursuant to Section 13.6(h) of the Credit Agreement, the aggregate principal amount of Term Loans held at any one time by Non-Debt Fund Affiliates does not exceed 25% of the aggregate outstanding principal amount of Term

Loans, (b) the requirements of Section 13.6(h)(i) of the Credit Agreement have been satisfied; and (c) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the] [any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender. [Furthermore, [the] [each] Assignee acknowledges and agrees that (i) the Assignor may possess or come into possession of additional information regarding the Assigned Interests or the Loan Parties at the time of or at any time after the transactions contemplated by this Affiliated Lender Assignment and Assumption are consummated that was not known to such Assignee or the Assignor as of the Effective Date and that, when taken together with information that was known to the Assignor at the time such assignment was consummated, may be information that would have been material to such Assignee's decision to enter into the assignment of such Assigned Interests ("**Assignor Known Excluded Information**"), (ii) such Assignee will independently make its own analysis and determination to enter into an assignment of its Assigned Interests and to consummate the transactions contemplated hereby notwithstanding such Assignee's lack of knowledge of Assignor Known Excluded Information and (iii) none of the Assignor, the Loan Parties, or any other Person shall have any liability to such Assignee with respect to the nondisclosure of the Assignor Known Excluded Information.]³⁴

[2. Each Assignee hereby agrees that notwithstanding anything to the contrary in the Credit Agreement, it shall have no right to (x) receive information, reports or other materials provided to the Lenders by the Administrative Agent or any other Lender or any other Person, except to the extent made available to the Borrower, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or the Administrative Agent or confidential communications from counsel to or advisors of the Administrative Agent or any of the Lenders]³⁵

[2.][3.] [The] [Each] Assignor acknowledges and agrees that (i) the Assignee may possess or come into possession of additional information regarding the Assigned Interests or the Loan Parties at any time after the transactions contemplated by this Affiliated Lender Assignment and Assumption are consummated that was not known to such Assignor or the Assignee as of the Effective Date and that, when taken together with information that was known to the Assignee at the time such assignment was consummated, may be information that would have been material to such Assignor's decision to enter into the assignment of such Assigned Interests ("**Assignee Known Excluded Information**"), (ii) such Assignor will independently make its own analysis and determination to enter into an assignment of its Assigned Interests and to consummate the assignment hereby notwithstanding such Assignor's lack of knowledge of Assignee Known Excluded Information and (iii) none of the Assignee, the Loan Parties, or any other Person shall have any liability to such Assignor with respect to the nondisclosure of the Assignee Known Excluded Information.]³⁶

³⁴ To be included if Assignor is an Affiliated Lender.

³⁵ To be included if the Assignee is a Non-Debt Fund Affiliate.

³⁶ To be included if Assignee is an Affiliated Lender.

[3.][4.] Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignee whether such amounts have accrued prior to, on or after the Effective Date specified for this Assignment and Assumption. The Assignor[s] and the Assignee[s] shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to such Effective Date or with respect to the making of this assignment directly between themselves.

[4.][5.] General Provisions. This Affiliated Lender Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Affiliated Lender Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Affiliated Lender Assignment and Assumption may be transmitted and/or signed by telefacsimile or delivered in 'PDF' format by electronic mail, and shall be effective as delivery of a manually executed counterpart of this Affiliated Lender Assignment and Assumption. THIS AFFILIATED LENDER ASSIGNMENT AND ASSUMPTION AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

EXHIBIT L

FORM OF COMPLIANCE CERTIFICATE

Reference is made to that certain Amended and Restated Credit Agreement dated as of [_____] , 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among CBL & Associates HoldCo I, LLC (the "Borrower"), CBL & Associates Properties, Inc. (the "Company"), joining in the execution of the Credit Agreement solely for the limited purposes set forth in Section 13.22 thereof, CBL & Associates Limited Partnership (the "Parent"), joining in the execution of the Credit Agreement solely for the limited purposes set forth in Section 13.22 thereof, the financial institutions party thereto and their assignees under Section 13.6 thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given to them in the Credit Agreement.

Pursuant to Section 9.3 of the Credit Agreement, the undersigned hereby certifies on behalf of the Borrower to the Administrative Agent and the Lenders that:

1. (a) The undersigned has reviewed the terms of the Credit Agreement and has made a review of the transactions, financial condition and other affairs of the Borrower and its Subsidiaries as of, and during the relevant accounting period ending on, _____, 20__, and (b) such review has not disclosed the existence during such accounting period, and the undersigned does not have knowledge of the existence, as of the date hereof, of any condition or event constituting a Default or Event of Default except as set forth on Schedule 2 hereto, which accurately describes the nature of the event(s), condition(s) or failure(s) that constitute (a) Default(s) or (an) Event(s) of Default, when it occurred and the actions which the Borrower (is taking) (is planning to take) with respect to such event(s), condition(s) or failure(s).

2. Schedule 1 attached hereto accurately and completely sets forth the calculations required to establish (x) to the extent applicable for such period, compliance with Section 10.1 (and if such covenants are not yet being tested, providing the covenant calculation solely for informational purposes) of the Credit Agreement and (y) the Debt Yield Ratio, in each case, on the date of the financial statements for the accounting period set forth above.

3. Schedule 3 attached hereto sets forth, for the Collateral Properties, on an individual and collective (roll-up) basis, all financial information maintained on the Collateral Properties, including, without limitation, trailing twelve (12) month MCASH NOI (including a footnote or schedule detailing the revenue of any tenants that are the subject of a bankruptcy or insolvency proceeding which is being included in such calculation of MCASH NOI), Occupancy Rate, a current Rent Roll, aggregate capital expenditures (including any deferred maintenance), redevelopment costs, tenant allowances and development investments for each Collateral Property made during such quarterly accounting period or fiscal year, as the case may be, year-to-date summary sales reports by Collateral Property and aged receivables reports.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has signed this Compliance Certificate on and as of _____, 20__.

CBL & Associates HoldCo I, LLC

By: CBL & Associates Limited Partnership, its general partner

By: CBL Holdings I, Inc., its general partner

By: _____

Name: _____

Title: _____

Exhibit L - 2

Compliance Certificate
Schedule 1
Section 10.1 Financial Covenants

Attached.

Exhibit L - 3

Compliance Certificate
Schedule 2
Default or Events of Default

[]

Exhibit L - 4

Compliance Certificate

Schedule 3

Collateral Properties Financial Information

Attached.

Exhibit L - 5

EXHIBIT M-1

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of [____], 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among CBL & Associates Holdco I, LLC, a Delaware limited liability company (the "Borrower"), CBL & Associates Limited Partnership, a Delaware limited partnership, solely for the limited purposes set forth therein, CBL & Associates Properties, Inc., a Delaware corporation, solely for the limited purposes set forth therein, the financial institutions party thereto and their assignees under Section 13.6 thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto.

Pursuant to the provisions of Section 3.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

EXHIBIT M-2

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of [_____], 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among CBL & Associates Holdco I, LLC, a Delaware limited liability company (the "Borrower"), CBL & Associates Limited Partnership, a Delaware limited partnership, solely for the limited purposes set forth therein, CBL & Associates Properties, Inc., a Delaware corporation, solely for the limited purposes set forth therein, the financial institutions party thereto and their assignees under Section 13.6 thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto.

Pursuant to the provisions of Section 3.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

EXHIBIT M-3

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of [____], 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among CBL & Associates Holdco I, LLC, a Delaware limited liability company (the "Borrower"), CBL & Associates Limited Partnership, a Delaware limited partnership, solely for the limited purposes set forth therein, CBL & Associates Properties, Inc., a Delaware corporation, solely for the limited purposes set forth therein, the financial institutions party thereto and their assignees under Section 13.6 thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto.

Pursuant to the provisions of Section 3.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:
Date: _____, 20__

EXHIBIT M-4

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of [____], 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among CBL & Associates Holdco I, LLC, a Delaware limited liability company (the “Borrower”), CBL & Associates Limited Partnership, a Delaware limited partnership, solely for the limited purposes set forth therein, CBL & Associates Properties, Inc., a Delaware corporation, solely for the limited purposes set forth therein, the financial institutions party thereto and their assignees under Section 13.6 thereof (the “Lenders”), Wells Fargo Bank, National Association, as Administrative Agent (the “Administrative Agent”), and the other parties thereto.

Pursuant to the provisions of Section 3.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN- E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____

Name:

Title:

Date: _____, 20__

Exhibit M-4 - 2

EXHIBIT N

FORM OF PROPERTY MANAGEMENT CONTRACT ASSIGNMENT

THIS ASSIGNMENT, CONSENT AND SUBORDINATION OF MANAGEMENT AGREEMENT (this “Agreement”) is made as of [_____], 2021, by and among CBL & ASSOCIATES MANAGEMENT, INC., a Delaware corporation (“Manager”), CBL & ASSOCIATES HOLDCO I, LLC, a Delaware limited liability company (“Borrower”) and each of the entities set forth on Schedule 1 attached hereto and made a part hereof (each, an “Owner” and, collectively, the “Owners” and, together with Borrower, each an “Assignor” and, collectively, the “Assignors”), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (together with its successors and assigns, “Administrative Agent”) for its benefit and for the benefit of the other Lender Parties.

RECITALS

A. Borrower is party to that certain Amended and Restated Credit Agreement dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among the Borrower, CBL & Associates Limited Partnership (the “Parent”), solely for the limited purposes set forth therein, CBL & Associates Properties, Inc. (the “Company”), solely for the limited purposes set forth therein, the Lenders from time to time party thereto and Administrative Agent. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Credit Agreement;

B. Borrower owns 100% of the direct or indirect membership or partnership interests in each Owner, and is either the chief manager, managing member, or general partner of each Owner, or of each entity that has a direct or indirect ownership interest in the Owner;

C. Each Owner owns certain real property and certain improvements located thereon listed after its name on Schedule 1 and more fully described on Exhibit A attached hereto and made a part hereof (which, together with all tangible and intangible personal property owned by such Owner located on or in or used in connection with or pertaining to such real property and improvements, shall hereinafter be referred to as a “**Property**” and, collectively with each other Property, the “**Properties**”);

D. Each Owner has engaged Manager to serve as such Owner’s sole and exclusive manager, with the responsibility for the management, operation, maintenance, leasing and otherwise with respect to each Property owned by such Owner, pursuant to that certain Omnibus Property Management Agreement dated as of [the date hereof] by and between Borrower, on behalf of the Owners, and Manager, as the same may have been amended, supplemented, or modified, a complete copy of which is attached hereto as Exhibit B (the “Management Agreement”). The Management Agreement describes Manager’s, Borrower’s and Owners’ respective rights and obligations regarding the management of the Properties;

E. Pursuant to and following satisfaction of the conditions set forth in the Credit Agreement, the Lenders have made or will make certain Loans to the Borrower;

F. Each Owner is a Subsidiary and has derived and will continue to derive direct and indirect economic benefit from the financial accommodations made by the Lenders to Borrower, and, each Owner, as a Guarantor, has unconditionally and irrevocably guaranteed the full and prompt payment of the Guaranteed Obligations;

G. In connection with the Loans, each Owner has executed and delivered, or expects to execute and deliver, to Administrative Agent for its benefit and for the benefit of the other Lender Parties certain mortgages, deeds of trust or other security instruments dated as of the date hereof (each, as the same may be amended, restated, supplemented or otherwise modified from time to time, a "Security Instrument" and, collectively, the "Security Instruments"), which Security Instruments encumber the Properties;

H. Borrower and Owners have assigned their respective interests in the Management Agreement to Administrative Agent, for its benefit and for the benefit of the other Lender Parties, pursuant to the Security Instruments, this Agreement and certain other Loan Documents;

I. At Borrower's request and in order to facilitate Lenders' agreement to make the Loan to Borrower, Manager and Borrower desire to subordinate the Management Agreement, their respective rights under the Management Agreement and their respective interests in the Property, if any, to the Security Instrument and the Loan upon the terms and conditions contained in this Agreement; and

J. Manager and Borrower intend that the Loans, the Guaranteed Obligations, the lien and security interests of the Security Instruments and the Loan Documents, be paramount, senior and prior to any and all obligations, expenses and indebtedness owing to Manager which arise from the Management Agreement and any and all existing liens or future rights to liens of Manager or any person or entity claiming by, through or under Manager which arise from any and all obligations, expenses and indebtedness owing to Manager under or in connection with the Management Agreement.

NOW THEREFORE, in consideration of Administrative Agent entering into the Credit Agreement and Lenders making the Loans, and for other good and valuable consideration, the receipt and sufficiency of which Manager and Borrower acknowledge, Manager and Borrower, on behalf of Owners, agree for the benefit of Administrative Agent, for its benefit and for the benefit of the other Lender Parties, as follows:

1. **Assignment; Consent.** As additional security for the performance by Borrower and Owners of the Guaranteed Obligations, each Assignor hereby assigns, transfers and pledges to Administrative Agent for its benefit and for the benefit of the other Lender Parties, and hereby grants to Administrative Agent for its benefit and for the benefit of the other Lender Parties a security interest in, all of such Assignor's right, title and interest in, to and under the Management Agreement. Manager hereby consents to the assignment to Administrative Agent of Assignors' rights under the Management Agreement, including without limitation Assignors' interest in all accounts maintained under the Management Agreement. Administrative Agent shall be entitled to exercise any and all rights of Assignors under the Management Agreement in accordance with the terms thereof, and Manager shall permit and comply in all respects with such exercise. Administrative Agent shall have the right to cure any default of any Assignor under the

Management Agreement, and may perform any act, duty or obligation required to be performed by any Assignor under the Management Agreement; provided, however, that nothing herein shall require Administrative Agent to cure any such default or to perform any such act, duty or obligation.

2. **Subordination**. Manager and Assignors hereby unconditionally subordinate and subject the Management Agreement and all of their respective rights under the Management Agreement, including, without limitation, any right to receive any amounts or fees (heretofore, now or hereafter payable) as management fees, management commissions, incentive management fees, affiliate payments, termination fees, liquidated damages, reimbursements of advances made by Manager to any Assignor or any other compensation, to the liens of the Security Instruments and Administrative Agent's and each Lender Party's rights and all remedies under the Loan Documents, including, without limitation, Administrative Agent's and each applicable Lender Party's right to receive payments of principal, interest and all other sums due and owing from time to time under the Loan Documents. Manager and Assignors agree that the rights of Administrative Agent under the Security Instruments and the other Loan Documents are senior and prior to any rights of Manager and Assignors under the Management Agreement.

3. **Representations, Warranties, Acknowledges and Certifications**. Manager and Assignors hereby represent, warrant, certify and acknowledge to Administrative Agent as follows: (a) Administrative Agent would not enter into the Credit Agreement and Lenders would not make the Loans without the execution and delivery of this Agreement; (b) a true and complete copy of the Management Agreement (including, without limitation, all modifications and amendments thereto, if any) is attached to this Agreement as Exhibit B; (c) the Management Agreement represents the entire agreement between Manager and Assignors with respect to the Properties; (d) the Management Agreement is not a lease; (e) Manager has no possessory interest in any Property; (f) as of the date hereof, management fees, management commissions, incentive management fees, affiliate payments, termination fees, liquidated damages, reimbursements of advances made by Manager to the owner of any Property and all other compensation payable to Manager under the Management Agreement are being paid on a current basis; (g) Manager has no existing defenses or claims against any Assignor with respect to the Management Agreement or any payments due and owing to Manager thereunder; and (h) as of the date hereof, the Management Agreement is in full force and effect, and no event of default on the part of either party thereunder, or any event or condition that, with the giving of notice or the passage of time, or both, would constitute an event of default on the part of either party thereunder, has occurred and is continuing.

4. **Default; Lender's Exercise of Rights**. Manager and Assignors agree that in the event of a default by any Assignor (continuing beyond any applicable grace period) under any of the Loan Documents during the term of this Agreement, Administrative Agent may take, at Assignors' expense (which shall be reimbursed to Administrative Agent upon demand and shall constitute part of the Guaranteed Obligations secured by the Security Instruments and the other Loan Documents), in Administrative Agent's own name or in the name of any Assignor or either or both of them, such action as Administrative Agent may at any time or from time to time determine to be necessary or appropriate, including, without limitation:

a. exercising any of the rights of any Assignor under the Management Agreement and requiring Manager to attorn to Lender (or its designee);

- b. terminating the Management Agreement upon not less than ten (10) days prior written notice (notwithstanding anything provided for in the Management Agreement) and requiring Manager to transfer its responsibility for the management of any or all of the Properties to a management company selected by Administrative Agent in Administrative Agent 's sole discretion, and Manager shall have no rights or recourse against Administrative Agent on account of such termination;
- c. amending, modifying or extending the Management Agreement by agreement with Manager;
- d. curing any default under the Management Agreement; and
- e. otherwise protecting the rights of Administrative Agent hereunder and under the Management Agreement.

Neither Administrative Agent nor any other Lender Party shall incur any liability as between itself and Assignors if any action taken by or on its behalf in good faith pursuant hereto shall prove to be, in whole or in part, inadequate or invalid.

EACH ASSIGNOR AGREES TO INDEMNIFY AND HOLD HARMLESS, AND AGREES TO CAUSE ANY OTHER GUARANTOR OF THE LOANS TO INDEMNIFY AND HOLD HARMLESS, ADMINISTRATIVE AGENT, EACH OTHER LENDER PARTY, ADMINISTRATIVE AGENT'S AFFILIATES, EACH OTHER LENDER PARTY'S AFFILIATES AND ADMINISTRATIVE AGENT'S AND EACH OTHER LENDER PARTY'S RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS, ATTORNEYS AND REPRESENTATIVES (EACH, AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES AND EXPENSES (EACH AN "INDEMNIFIED CLAIM") (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND DISBURSEMENTS OF COUNSEL UNLESS LENDER ASSERTS

THAT A CONFLICT EXISTS, IN WHICH CASE ANY APPLICABLE INDEMNIFIED PARTY MAY RETAIN ADDITIONAL COUNSEL AS SUCH INDEMNIFIED PARTY DETERMINES NECESSARY TO RESOLVE SUCH CONFLICT AND ALL REASONABLE FEES AND EXPENSES OF SUCH COUNSEL SHALL CONSTITUTE AN INDEMNIFIED CLAIM HEREUNDER), JOINT OR SEVERAL, THAT MAY BE INCURRED BY OR ASSERTED OR AWARDED AGAINST ANY INDEMNIFIED PARTY (INCLUDING, WITHOUT LIMITATION, IN CONNECTION WITH OR RELATING TO ANY INVESTIGATION, LITIGATION OR PROCEEDING OR THE PREPARATION OF ANY DEFENSE IN CONNECTION THEREWITH), IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, EXCEPT TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS, LIABILITY, OR EXPENSE IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY. IN THE CASE OF AN INVESTIGATION, LITIGATION OR OTHER PROCEEDING TO WHICH THE INDEMNITY IN THIS PARAGRAPH APPLIES, SUCH INDEMNITY SHALL BE EFFECTIVE

WHETHER OR NOT SUCH INVESTIGATION, LITIGATION OR PROCEEDING IS BROUGHT BY ANY ASSIGNOR OR ANY OTHER GUARANTOR OF THE LOANS, ANY OF THE DIRECTORS, SECURITY HOLDERS OR CREDITORS OF ANY SUCH ASSIGNOR OR ANY OTHER SUCH GUARANTOR, AN INDEMNIFIED PARTY OR ANY OTHER PERSON, AND WHETHER OR NOT AN INDEMNIFIED PARTY IS OTHERWISE A PARTY THERETO. THIS INDEMNITY WILL SURVIVE REPAYMENT OF THE LOANS.

5. **Attornment; Right to Terminate.** If Administrative Agent or any designee or affiliate of Administrative Agent shall acquire possession of any Property through judicial or non-judicial foreclosure or otherwise, Administrative Agent or such designee or affiliate shall have the right to cause Manager to continue its management of such Property by assuming the obligations of Assignors under the Management Agreement with respect to such Property, but (a) without any liability for any act or omission of any Assignor prior to the date of acquisition, (b) without being subject to any offsets or advances which Manager may have had against any such Assignor, and (c) without being bound by any agreement or modification of the Management Agreement entered into without Administrative Agent's prior written consent. If Administrative Agent or any designee or affiliate of Administrative Agent explicitly assumes the obligations of any Assignor under the Management Agreement in writing pursuant to this Section, and if Administrative Agent or such designee or affiliate shall thereafter desire to sell any such Property to a third party, then Administrative Agent shall either (i) cause such third party to assume the obligations of the applicable Assignor under the Management Agreement with respect to such Property or (ii) terminate the Management Agreement as to such Property by written notice to Manager without further obligation thereunder. If a third party shall acquire title to any Property as a purchaser at a foreclosure sale or otherwise in connection with the exercise of any remedies of Administrative Agent under the Loan Documents, then such third party, immediately upon acquiring title to such Property, shall have the right to cause Manager to continue its management of such Property by assuming the obligations of the applicable Assignor under the Management Agreement with respect to such Property, but subject to the conditions set forth in clauses (a) through (c) of this Section. Following any assumption by Administrative Agent or any designee or affiliate of Administrative Agent or any such third party, in accordance with the terms and conditions of this Section, of the obligations of any Assignor under the Management Agreement, Manager shall recognize such person or entity as the applicable Assignor under the Management Agreement with respect to such Property. Upon any termination or expiration of the Management Agreement, the Manager shall reasonably cooperate with and assist Administrative Agent (or its designee or successor) to effect the transfer to Administrative Agent (or its designee or successor) of any and all licenses, permits, governmental authorizations, keys, combinations, statements, books & records, insurance policies, documents and/or agreements required for the operation of any applicable Property.

6. **Liability of Administrative Agent.** Manager agrees that Administrative Agent and its successors and assigns shall not have any liability under the Management Agreement until such time, if any, as Administrative Agent or such successor or assign, as applicable, shall have explicitly assumed the obligations of any applicable Assignor under the Management Agreement in writing and elected to cause Manager to continue its management of the applicable Property. In any event, Manager shall look only to the estate and property of Administrative Agent or its successors or assigns in such Property for the satisfaction of Manager's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default

by Administrative Agent or its successors or assigns under the Management Agreement, and no other property or assets of Lender (or its successors or assigns) shall be subject to levy, execution or other enforcement procedure for the satisfaction of Manager's remedies under or with respect to the Management Agreement or the relationship of the parties thereunder. If Administrative Agent or a successor or assign explicitly assumes the obligations of any Assignor with respect to any Property under the Management Agreement in writing or acquires actual physical possession of such Property, Manager may resign upon not less than sixty (60) days notice to Lender or such successor or assign, as applicable.

7. **Indemnification.** Each Assignor and Manager each agrees to indemnify Administrative Agent and the other Lender Parties and defend and hold Administrative Agent and the other Lender Parties harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including but not limited to reasonable attorney's fees) which Administrative Agent or any Lender Party may incur under the Management Agreement or this Agreement and from any alleged or actual obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Management Agreement. This indemnification will not apply to actions taken by Administrative Agent or any Lender Party subsequent to Administrative Agent's acquisition of title by foreclosure. This provision shall survive any termination of the Management Agreement and any foreclosure.

8. **Notices.** All notices and other communications under this Agreement will be made in writing and given in accordance with this Section 8. All notices, demands, or other communications under this Agreement shall be in writing and shall be delivered to the appropriate party at the address provided below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Each party may establish a new address from time to time by written notice to the other given in accordance with this Section 6; provided, however, that no change of address will be effective until written notice thereof actually is received by the party to whom such change of address is sent. Notice to outside counsel designated by a party entitled to receive notice is for convenience only and is not required for notice to a party to be effective in accordance with this Section 6:

To Administrative Agent:

Wells Fargo Bank, National Association
10 South Wacker Drive, 32nd Floor
Chicago, IL 60606
Attn: Loan Administration

with a copy to:

Wells Fargo Bank, National Association
600 South 4th Street, 9th Floor
Minneapolis, MN 55415
Attn: David DeAngelis, CRE Agency Services

and

Wells Fargo Bank, National Association
10 South Wacker Drive, 32nd Floor
Chicago, IL 60606
Attn: Brandon Barry

To Manager:

CBL & Associates Management, Inc.
2030 Hamilton Place Boulevard Suite 500, CBL Center
Chattanooga, Tennessee 37421
Attention: President

with a copy to:

Chief Legal Officer at the above listed address

To Assignors:

c/o CBL & Associates Properties, Inc.
2030 Hamilton Place Boulevard Suite 500, CBL Center
Chattanooga, Tennessee 37421
Attention: President

with a copy to:

Chief Legal Officer at the above listed address

9. **Governing Law.**

a. THIS AGREEMENT, THE OBLIGATIONS ARISING HEREUNDER, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE AGREEMENT, THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT

HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS (OTHER THAN WITH RESPECT TO LIENS AND SECURITY INTERESTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, THE ACCOUNTS) WHICH SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION APPLICABLE THERETO IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF NEW YORK) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH ASSIGNOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

b. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, MANAGER OR ANY ASSIGNOR ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT ADMINISTRATIVE AGENT'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND MANAGER AND EACH ASSIGNOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING AND WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MANAGER AND EACH ASSIGNOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PARTY AT ITS ADDRESS FOR NOTICES PROVIDED FOR HEREIN. SHOULD MANAGER OR ANY ASSIGNOR FAIL TO APPEAR OR ANSWER ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THIRTY (30) DAYS AFTER THE MAILING THEREOF, MANAGER OR SUCH ASSIGNOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST IT AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

10. **Relation to Management Agreement.** In the event of any conflict or discrepancy between any provision in this Agreement and any provision of the Management Agreement, the applicable provision of this Agreement shall control.

11. **Successors and Assigns.** This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. As used herein “Administrative Agent” shall include any subsequent holder of the Security Instrument.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Signature and acknowledgement pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature and acknowledgement pages are physically attached to the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS HEREOF, Manager, Borrower and each Owner have caused this Subordination of Management Agreement to be duly executed under seal as of the date first set forth above.

MANAGER:

CBL & ASSOCIATES MANAGEMENT, INC., a **Delaware corporation**

By: _____
Name: _____
Title: _____

BORROWER:

CBL & ASSOCIATES HOLDCO I, LLC

By: CBL & Associates Limited Partnership,
[its sole member]

By: CBL Holdings I, Inc.,
its sole general partner

By: _____
Name: _____
Its: _____

OWNERS:

[BORROWER TO PROVIDE SIGNATURE BLOCKS]

**EXHIBIT A
TO
SUBORDINATION OF MANAGEMENT AGREEMENT
LEGAL DESCRIPTIONS**

Exhibit A Legal Description-1 to Subordination of Management Agreement

EXHIBIT B
TO
SUBORDINATION OF MANAGEMENT AGREEMENT

MANAGEMENT AGREEMENT

[To Be Attached]

NAI-1520400544v4

Exhibit B Management Agreement-1 to Subordination of Management Agreement

Exhibit M

New Notes Indenture

CBL & ASSOCIATES HOLDCO II, LLC
as Company,

CBL & ASSOCIATES PROPERTIES, INC.,
as REIT,

THE GUARANTORS PARTY HERETO,
as Guarantors,

AND

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee and Collateral Agent

INDENTURE¹

DATED AS OF [NOVEMBER 1], 2021

10% SENIOR SECURED NOTES DUE 2029

¹ This indenture remains subject to negotiation, revision, and approval of the Company and the Required Consenting Noteholders (as defined in the Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications), dated August 9, 2021 (Docket No. 1369)).

CROSS-REFERENCE TABLE*

<i>Trust Indenture Act Section</i>	<i>Indenture Section</i>
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	11.03
(c)	11.03
313(a)	7.06
(b)(1)	7.06; 12.02
(b)(2)	7.06; 7.07
(c)	7.06; 11.02
(d)	7.06
314(a)	4.08; 4.11; 11.02; 11.05
(b)	12.06
(c)(1)	11.04
(c)(2)	11.04
(c)(3)	N.A.
(d)	12.02; 12.05; 12.06
(e)	11.05
(f)	N.A.
315(a)	7.01
(b)	7.05; 11.02
(c)	7.01
(d)	7.01
(e)	6.11
316(a)	11.06
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.11
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	11.01
(b)	N.A.
(c)	11.01

N.A. means not applicable.

* This Cross Reference Table is not part of this Indenture.

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Exhibit E –	Schedule of Inactive Subsidiaries

INDENTURE, dated as of [November 1], 2021, between CBL & ASSOCIATES HOLDCO II, LLC, a Delaware limited liability company (together with its successors and assigns under this Indenture, the “*Company*”), having its principal office at 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, the GUARANTORS party hereto from time to time, CBL & ASSOCIATES PROPERTIES, INC., a Delaware corporation (together with its successors and assigns under this Indenture, the “*REIT*”), having its principal executive office located at 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, and WILMINGTON SAVINGS FUND SOCIETY, FSB (together with its successors and assigns under this Indenture, the “*Trustee*”), as Trustee, and WILMINGTON SAVINGS FUND SOCIETY, FSB (together with its successors and assigns under this Indenture, the “*Collateral Agent*”), as Collateral Agent.

RECITALS

WHEREAS, pursuant to the terms and conditions of the Third Amended Joint Chapter 11 Plan, dated May 26, 2021, as the same may be amended, modified or restated from time to time (the “*Plan of Reorganization*”) relating to the reorganization under Chapter 11 of Title 11 of the United States Code of the REIT and certain of its direct and indirect Subsidiaries, which Plan of Reorganization was confirmed by order, dated August 11, 2021, of the Bankruptcy Court (the “*Bankruptcy Order*”), the holders of Consenting Crossholder Claims (as defined in the Plan of Reorganization) and Unsecured Claims (as defined in the Plan of Reorganization) are to be issued the Securities (as hereinafter defined) in an aggregate principal amount of \$455,000,000;

WHEREAS, the REIT has duly authorized the execution and delivery of this Indenture to provide its limited guarantee in respect of the Securities issued hereunder; and

WHEREAS, (a) all acts and things necessary to make (i) the Securities, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company; (ii) the Guarantees of the Guarantors hereunder the valid, binding and legal obligations of the Guarantors; (iii) the Limited Guarantee of the REIT hereunder the valid, binding and legal obligation of the REIT; and (iv) this Indenture a valid agreement of the Company, the Guarantors and the REIT, according to its terms, have been done and performed, and (b) the execution of this Indenture and the issuance hereunder of the Securities have in all respects been duly authorized.

NOW, THEREFORE, in order to declare the terms and conditions upon which the Securities are, and are to be, authenticated, issued and delivered, and in consideration of the premises set forth herein, the Company, the Guarantors and the REIT covenant and agree with the Trustee and Collateral Agent for the equal and proportionate benefit of the respective Holders from time to time of the Securities (except as otherwise provided below), as follows:

ARTICLE 1
Definitions and Incorporation by Reference

SECTION 1.01 Definitions.

“*Acceleration Premium*” means, with respect to any Securities on any applicable acceleration date, the present value at such acceleration date of all required and unpaid interest payments due on such Security through the Stated Maturity of the Securities (excluding accrued but unpaid interest to the acceleration date), computed using a discount rate equal to the relevant Acceleration Premium Treasury Rate as of such acceleration date plus 50 basis points, as calculated by the Company or its agent; the Trustee shall have no responsibility to calculate or verify the calculation of the Acceleration Premium.

“*Acceleration Premium Treasury Rate*” means, as of the applicable acceleration date, the yield to maturity as of such acceleration date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available two Business Days prior to such acceleration date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such acceleration date to the Stated Maturity, provided, however, that if the period from such acceleration date to the Stated Maturity is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“*Acquired Debt*” means Indebtedness of a Person:

- (1) existing at the time such Person is merged or consolidated with or into the Company or any Subsidiary or becomes a Subsidiary of the Company but only to the extent not paid in connection with such merger or consolidation; or
- (2) assumed by the Company or any Subsidiary in connection with the acquisition of assets from such Person.

Acquired Debt shall be deemed to be Incurred on the date the acquired Person is merged or consolidated with or into the Company or any Subsidiary or becomes a Subsidiary of the Company or the date of the related acquisition, as the case may be, determined on a consolidated basis in accordance with accounting principles generally accepted in the United States.

“*Additional Assets*” means:

- (1) any property, plant, equipment or other tangible assets used or useful in a Related Business;
- (2) the Capital Stock of a Person that becomes a Subsidiary as a result of the acquisition of such Capital Stock by the Company or another Subsidiary; or
- (3) Capital Stock in any existing or future Subsidiary or Joint Venture that owns any Property so long as such acquired Capital Stock is Collateral to the extent required by the terms of this Indenture;

provided, however, that any such Subsidiary or Person described in clause (2) or (3) above is primarily engaged in a Related Business.

“*Affiliate*” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*After-Acquired Property*” means any property (other than Collateral or Excluded Property) that is acquired or otherwise owned by the Company or any Subsidiary after the Issue Date of a type that secures the Secured Obligations.

“*Applicable Procedures*” means, with respect to any matter at any time, the policies and procedures of the Depository, if any, that are applicable to such matter at such time.

“*Asset Sale*” means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Subsidiary, including (x) any disposition by means of a merger, consolidation or similar transaction, (y) any Event of Loss, loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title or use and (z) a disposition in connection with a Sale and Leaseback Transaction (each referred to for the purposes of this definition as a “*disposition*”), of:

- (1) any assets or other rights or property that constitute Property Collateral;
- (2) any shares of Capital Stock of a Subsidiary (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Subsidiary);
- (3) the ownership interest of the Company or any Subsidiary in a Joint Venture; or
- (4) any other assets (other than Capital Stock) of the Company or any Subsidiary outside of the ordinary course of business of the Company or such Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

- (A) a disposition by a Subsidiary to the Company or by the Company or a Subsidiary to a Subsidiary so long as (a) the covenants in Section 5.01, Section 5.02 and Section 5.03, to the extent applicable, are satisfied or do not expressly prohibit such transfer, (b) if a disposition is by a Subsidiary Guarantor, such disposition must be to a Subsidiary Guarantor or a Subsidiary that becomes a Subsidiary Guarantor pursuant to Section 4.07 unless such Subsidiary will become an Excluded Non-Guarantor Subsidiary pursuant to clause (3) of the definition of Excluded Non-Guarantor Subsidiary substantially concurrently with such disposition and (c) if such transfer includes Collateral (unless such transfer is to a

Subsidiary that will become an Excluded Non-Guarantor Subsidiary pursuant to clause (3) of the definition of Excluded Non-Guarantor Subsidiary substantially concurrently with such transfer), such transfer does not occur until and unless the transferee has caused a valid, enforceable, perfected first priority Lien in or on such Collateral (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and has executed and delivered to the Collateral Agent the following documents and certificates and any other documents and certificates required by Section 4.14, Article 12 or any other provision of this Indenture:

(a) to the extent such Collateral constitutes Property set forth in Category 1 on Annex I hereto, (x) a Mortgage with respect to such Collateral, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office) and (y) Security Documents with respect to all personal property of such transferee, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee);

(b) to the extent such Collateral constitutes Capital Stock of a Subsidiary that owns a Property set forth in Category 1, Category 3 or Category 8 on Annex I hereto, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all other personal property of such transferee, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(c) to the extent of any Collateral other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the

appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(d) to the extent such Collateral constitutes Property set forth in Category 1 on Annex I hereto, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require; and

(e) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

(B) any single transaction or series of related transactions that involves the disposition of assets having a Fair Market Value of less than \$10 million;

(C) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind (other than any property management agreement with respect to a material portion of the Properties of the Company and its Subsidiaries);

(D) any issuance or sale of Capital Stock of the Company;

(E) a disposition of cash or Temporary Cash Investments;

(F) the licensing or sublicensing of intellectual property or other general intangibles and licenses, sublicenses, leases, subleases and easements of other property in the ordinary course of business which would not reasonably be expected to materially interfere with the business of the Company and its Subsidiaries, as determined in good faith by an Officer of the Company;

(G) dispositions of assets secured by Liens incurred pursuant to clauses (2), (3), (4) and (5) of the definition of Permitted Liens to lenders or other secured parties holding such Permitted Liens to secure Indebtedness permitted to be Incurred pursuant to Section 4.02(b)(2), (3), (4), (7), (8), (9) and (10) upon the default of, and in satisfaction of all of, such Indebtedness, to the extent the Board of Directors determines in good faith such disposition is commercially reasonable in light of the circumstances;

(H) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien);

(I) a contribution of any Undeveloped Property to a Joint Venture in which a Subsidiary holds an ownership interest in connection with the formation of such Joint Venture; provided that (i) the sole asset of such Subsidiary is Capital Stock in such Joint Venture; (ii) the Company uses commercially reasonable efforts

in good faith to cause the pledge of the Capital Stock in such Subsidiary to be permitted by the agreements governing such Joint Venture and any agreement governing Indebtedness of such Joint Venture, and, solely to the extent permitted pursuant to such commercially reasonable efforts in good faith, the Capital Stock in such Subsidiary is pledged as Collateral and, to the extent such Capital Stock is After-Acquired Property, the provisions of Section 4.14 are complied with; and (iii) the provisions of Section 4.07 are complied with in respect of such Subsidiary such that such Subsidiary is or becomes a Subsidiary Guarantor;

(J) for purposes of Section 4.03 only, a disposition of all or substantially all the assets of the Company in accordance with Section 5.01;

(K) leases and subleases of Property in the ordinary course of business;

(L) [RESERVED];

(M) any exchange of (i) assets made in the ordinary course of business for assets related to a Related Business of a comparable or greater market value or usefulness to the business of the Company as a whole, as determined in good faith by the Boards of Directors of both the Company and the REIT and (ii) like property for use in a Related Business that is allowable under Section 1031 of the Code that has been approved by the Boards of Directors of both the Company and the REIT (such assets referred to in clause (i) or like property referred to in clause (ii) so exchanged being referred to as the “*Exchanged Property*”) so long as (1) in the case of clause (ii), if such Exchanged Property includes Collateral that constitutes Property set forth in Category 1 on Annex I hereto, the Fair Market Value (as determined in good faith by the Boards of Directors of both the Company and the REIT) of such Exchanged Property, together with the Fair Market Value of any prior exchanges of Exchanged Property constituting Property set forth in Category 1 on Annex I hereto made pursuant to clause (ii), shall not exceed \$75.0 million in the aggregate and (2) in the case of clause (i) or (ii), if such Exchanged Property includes Collateral, such exchange shall not occur until and unless the following conditions are satisfied: (x)(i) if the Received Property (as defined below) constitutes Capital Stock of a Joint Venture, the Subsidiary that acquires such Capital Stock shall be a Subsidiary Guarantor or become a Subsidiary Guarantor to the extent (A) required pursuant to Section 4.07 and (B) such guarantee is permitted by the agreements governing such Joint Venture and any agreement governing Indebtedness of such Joint Venture provided that the Company shall use its commercially reasonable efforts in good faith to cause such guarantee to be permitted, and any Property owned by such Joint Venture shall be deemed listed under “Category 4” on Annex I hereto, (ii) if any Received Property constitutes (directly or through the acquisition of Capital Stock) Excluded After-Acquired Property owned by a Subsidiary of a Subsidiary, then such Received Property shall be deemed listed under “Category 4” on Annex I hereto and the Subsidiary that owns the Capital Stock of the Subsidiary that directly owns such Received Property shall be a Subsidiary Guarantor to the extent required or become a Subsidiary Guarantor pursuant to Section 4.07 and (iii) if any Received Property (directly or

through the acquisition of Capital Stock) is owned by a Subsidiary and is not subject to a Lien securing Non-Recourse Mortgage Indebtedness at the time of acquisition, (a) such Subsidiary (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (b) such Received Property shall be deemed listed under "Category 1" on Annex I hereto, and (y) the Company or the Subsidiary Guarantor party to such exchange has caused a valid, enforceable, perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien in or on the property or assets received in exchange for such Exchanged Property (the "*Received Property*") (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and has executed and delivered to the Collateral Agent the following documents and certificates and any other documents and certificates required by Section 4.14 and Article 12 of this Indenture; and

(a) to the extent such Received Property constitutes Property, (x) a Mortgage with respect to such Received Property, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office), (y) Security Documents with respect to all personal property of the Company or the Subsidiary Guarantor party to such exchange, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee) and (z) the remaining Real Property Collateral Requirements;

(b) to the extent such Received Property constitutes Capital Stock, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all other personal property of the Company or the Subsidiary Guarantor party to such exchange, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents; provided that to the extent that the pledge of Capital Stock in a Joint Venture is not permitted by the agreements governing such Joint

Venture or any agreement governing Indebtedness of such Joint Venture, the Company shall only be required to commercially reasonable efforts in good faith to provide a pledge of such Capital Stock in such Joint Venture;

(c) to the extent of any Received Property other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(d) to the extent such Received Property constitutes Property deemed listed under Category 1 on Annex I hereto, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require;

(e) to the extent such Received Property includes cash, such cash (which shall be deemed Net Available Cash) is deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien) and applied in accordance with Section 4.03; and

(f) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

(N) dispositions of receivables (including rents) in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings or the conversion of accounts receivable into notes receivable in the ordinary course of business;

(O) dispositions of obsolete, worn out, uneconomic or damaged property, equipment or other assets (other than any Property Collateral) in the ordinary course of business or consistent with past practice or industry practices that are no longer economically practical or commercially desirable to maintain or used or useful in the business of the Company and its Subsidiaries as determined in good faith by the Company;

(P) dispositions of Capital Stock in Joint Ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding written arrangements (the proceeds of which will be deemed to be Net Available Cash), so long as the Net Available Cash thereof is deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien) and applied in accordance with Section 4.03; and

(Q) the unwinding of any cash management services or Hedging Obligations.

“*Asset Sale Excess Proceeds Other Offer*” means, with respect to any Asset Sale Excess Proceeds Offer, an offer by the Company to purchase the Other Secured Notes pursuant to the terms of the Other Secured Notes Indenture conducted substantially concurrently with such Asset Sale Excess Proceeds Offer and in an amount equal to the Pro Rata Percentage Amount applicable to the Other Secured Notes with respect to the Asset Sale Trigger Event requiring the Company to make such Asset Sale Excess Proceeds Offer.

“*Asset Sale Excess Proceeds Other Secured Notes Unused Amount*” means, as to any Asset Sale Excess Proceeds Offer, the excess, if any, of (i) the Pro Rata Percentage Amount applicable to the Other Secured Notes with respect to such Asset Sale Excess Proceeds Offer over (ii) the aggregate Asset Sale Excess Proceeds Offer Price payable in respect of the aggregate principal amount of Other Secured Notes validly tendered and accepted for purchase in such Asset Sale Excess Proceeds Other Offer made substantially concurrently with such Asset Sale Excess Proceeds Offer.

“*Asset Sale Excess Proceeds Securities Unused Amount*” means, as to any Asset Sale Excess Proceeds Offer, the excess, if any, of (i) the Pro Rata Percentage Amount applicable to the Securities with respect to such Asset Sale Excess Proceeds Offer over (ii) the aggregate Asset Sale Excess Proceeds Offer Price payable in respect of the aggregate principal amount of Securities validly tendered and accepted for purchase in such Asset Sale Excess Proceeds Offer.

“*Authorized Representative*” means (i) in the case of the Notes Obligations, the Trustee, or (ii) in the case of the Other Secured Notes Obligations, the Other Secured Notes Trustee.

“*Average Life*” means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing:

(1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of or redemption or similar payment with respect to such Indebtedness (but not including any payments under any unexercised extensions) multiplied by the amount of such payment by,

(2) the sum of all such payments.

“*Bankruptcy Court*” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division, in the proceedings under Chapter 11 of the United States Bankruptcy Code styled *CBL & Associates Properties, Inc., et al.*, Debtors, Case No. No. 20-35226 (DRJ).

“*Bankruptcy Proceeding*” means the bankruptcy proceedings of the REIT and certain of its Subsidiaries under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court.

“*Board of Directors*” means:

- (1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;
- (2) with respect to a partnership, the Board of Directors of the general partner of the partnership;
- (3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

Unless otherwise specified herein, each reference to a Board of Directors will refer to the Board of Directors of the Company.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the applicable Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Trustee. Unless otherwise specified herein, each reference to a Board Resolution will refer to a Board Resolution of the Company.

“*Business Day*” means each day which is not a Legal Holiday.

“*Capital Lease Obligation*” means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty; provided, however, that Capital Lease Obligations shall exclude all operating leases.

“*Capital Stock*” of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“*Casualty*” means any casualty, loss, damage, destruction or other similar loss with respect to real or personal property or improvements.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all assets and property, whether real, personal or mixed (including any leasehold interest under a ground lease), wherever located and whether now owned or at any time acquired after the Issue Date by the Company or any Subsidiary as to which a Lien is granted under the Security Documents to secure the Secured Obligations.

“Collateral Agency and Intercreditor Agreement” means the Collateral Agency and Intercreditor Agreement dated the Issue Date, among the Company, the REIT, the Guarantors, the Collateral Agent, the Trustee, as Authorized Representative for the Secured Parties holding Notes Obligations and as initial applicable Authorized Representative, and Wilmington Savings Fund Society, FSB, as the Other Secured Notes Trustee and as Authorized Representative for the Secured Parties holding Other Secured Notes Obligations.

“Collateral Agent” means Wilmington Savings Fund Society, FSB, in its capacity as collateral agent under the Indenture and Security Documents, until a successor replaces it in such capacity and, thereafter, means the successor.

“Collateral Disposition” means any Asset Sale of assets or other rights or property that constitute Collateral under the Security Documents. The sale or issuance of Capital Stock in a Subsidiary Guarantor that owns Collateral, or of Capital Stock in such Subsidiary Guarantor’s direct or indirect parent, such that, as a consequence, such Person no longer is a Subsidiary Guarantor, shall be deemed a Collateral Disposition of the Collateral owned by such Subsidiary Guarantor; provided, that a Subsidiary Guarantor that owns Collateral may form a Joint Venture and contribute assets constituting Undeveloped Property to such Joint Venture so long as the provisions of paragraph (I) of the definition of “Asset Sale” are complied with. For the avoidance of doubt, no Collateral Release shall constitute a Collateral Disposition.

“Collateral Property” means any Property that constitutes Collateral.

“Collateral Release” means (i) with respect to any Collateral owned by the Company or any Subsidiary, a release of the Liens securing the Secured Obligations on such asset or (ii) with respect to any Property that is directly owned by a Subsidiary of the Company and its Subsidiaries, the grant of any Lien on such Property that is a Permitted Lien, in each case of clause (i) and (ii), pursuant to a Release Trigger Event as a result of which such Collateral or Property, as applicable, continues to be owned by the Company or a Subsidiary.

“Collateral Release Excess Proceeds Offer” means, with respect to any Collateral Release Excess Proceeds Redemption, an offer by the Company to purchase the Other Secured Notes pursuant to the terms of the Other Secured Notes Indenture conducted substantially concurrently with such Collateral Release Excess Proceeds Redemption and in an amount equal to the Pro Rata Percentage Amount applicable to the Other Secured Notes with respect to the Release Trigger Event requiring the Company to effect such Collateral Release Excess Proceeds Redemption.

“Collateral Release Excess Proceeds Other Secured Notes Unused Amount” means as to any Collateral Release Excess Proceeds Redemption, the excess if any, of (i) the Pro Rata Percentage Amount applicable to the Other Secured Notes with respect to such Collateral Release

Excess Proceeds Offer over (ii) the aggregate Collateral Release Excess Proceeds Redemption Price payable in respect of the aggregate principal amount of Other Secured Notes validly tendered and accepted for purchase in the Collateral Release Excess Proceeds Offer made substantially concurrently with such Collateral Release Excess Proceeds Redemption.

“*Company*” means the Person named as the “Company” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to Section 5.02 and, thereafter “Company” shall mean such successor Person.

“*Condemnation*” means any taking by a governmental authority of assets or property, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation or in any other manner.

“*Confirmation Date*” means the later of the date on which the Plan of Reorganization is first confirmed by the Bankruptcy Court or the last date on which an amendment, modification or restatement of the Plan of Reorganization is approved by the Bankruptcy Court.

“*corporation*” means a corporation, association, company (including limited liability company), joint-stock company, business trust or other similar entity.

“*Debt Service*” means for any period the sum of (i) interest expense (whether or not paid) on Indebtedness of the Operating Partnership and its Subsidiaries and Joint Ventures, and (ii) scheduled mandatory amortization payments of principal (whether or not paid) on Indebtedness of the Operating Partnership and its Subsidiaries and Joint Ventures, in each case, determined on a proportional ownership basis based upon the Operating Partnership’s ownership (direct or indirect) in each of its Subsidiaries and Joint Ventures. For the avoidance of doubt, scheduled mandatory amortization payments of principal as used in clause (ii) shall include payments of principal of Indebtedness under the New Bank Term Loan Facility, any other credit facilities and property mortgages but exclude payments of principal made with “Excess Cash Flow” (as such term is defined in the New Bank Term Loan Facility).

“*Debt Service Ratio*” means for any period the Modified Cash NOI for all consolidated and unconsolidated properties of the Operating Partnership based on its share (determined on a proportional ownership basis based upon the Operating Partnership’s ownership (direct or indirect) in each of its Subsidiaries and Joint Ventures) divided by Debt Service.

“*Default*” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“*Disqualified Stock*” means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

- (1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;

- (2) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or
- (3) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part;

in each case on or prior to the date that is 91 days after the earlier of the date (a) of the Stated Maturity of the Securities and (b) on which there are no Securities outstanding; provided, however, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Capital Stock upon the occurrence of an “asset sale” occurring prior to the date 91 days after the earlier date determined pursuant to clause (a) or (b) above shall not constitute Disqualified Stock if:

(A) the “asset sale” provisions applicable to such Capital Stock are not materially more favorable to the holders of such Capital Stock than the terms applicable to the Securities in Section 4.03; and

(B) any such requirement only becomes operative after compliance with such terms applicable to the Securities, including the purchase of any Securities tendered pursuant thereto.

The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price shall be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Indenture; provided, however, that if such Disqualified Stock could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price shall be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

“*Event of Loss*” means, with respect to any Property Collateral (each an “*Event of Loss Asset*”), any (1) Casualty of such Event of Loss Asset, (2) Condemnation or seizure of such Event of Loss Asset or (3) settlement in lieu of clause (2) above.

“*Exchange Act*” means the U.S. Securities Exchange Act of 1934, as amended.

“*Excluded After-Acquired Property*” means any Property first acquired by any Subsidiary after the Issue Date that is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred to finance the purchase price of such Property (or Refinancing Indebtedness in respect thereof) pursuant to Section 4.02(b)(10).

“*Excluded Initial Property*” means, to the extent owned by the Company or any Subsidiary, (1) any Property that is set forth in Category 4 on Annex I hereto but only if and so long as such Property is subject to Permitted Liens granted to secure Indebtedness outstanding on the Issue Date incurred pursuant to Section 4.02(b)(4) or Refinancing Indebtedness in respect thereof incurred pursuant to Section 4.02(b)(9) and (2) any Property that is set forth in Category 3 or Category 8 on Annex I hereto.

“*Excluded Non-Guarantor Subsidiary*” means:

(1) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 4 on Annex I hereto but only if and so long as such Property is subject to Permitted Liens granted to secure Indebtedness outstanding on the Issue Date incurred pursuant to Section 4.02(b)(2) or Refinancing Indebtedness in respect thereof incurred pursuant to Section 4.02(b)(9);

(2) any Subsidiary that directly owns solely a direct interest in a Joint Venture that directly or indirectly owns solely a Property (or Properties) set forth in Category 4 or Category 7 on Annex I hereto but only if and so long as the guaranty by such Subsidiary of the Secured Obligations is not permitted by the agreements governing such Joint Venture or any agreement governing Indebtedness of such Joint Venture in existence on the Issue Date;

(3) any Subsidiary that directly owns solely the Capital Stock of a Subsidiary that directly owns solely a Property (or Properties) set forth in Category 1, Category 3 or Category 8 on Annex I hereto but only if and so long as such Property (or all of such Properties) so owned is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4), (3) or (7), respectively, or Recourse Indebtedness incurred pursuant to Section 4.02(b)(14) and the guaranty of the Secured Obligations by such Subsidiary owning such Capital Stock is not permitted by the agreements governing such Indebtedness of such Subsidiary; provided, with respect to the release of the Note Guarantee of a Subsidiary Guarantor that owns solely the Capital Stock of a Subsidiary that directly owns solely such Property (or Properties) in Category 1, Category 3 or Category 8 set forth on Annex I hereto, the Release Condition shall be satisfied;

(4) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 3 set forth on Annex I hereto;

(5) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 8 set forth on Annex I hereto;

(6) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 1 on Annex I hereto but only if and so long as such Property (or all of such Properties) so owned is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4); provided, with respect to the release of the Note Guarantee of a Subsidiary Guarantor that owns solely such Property (or Properties) in Category 1 set forth on Annex I hereto, the Release Condition shall be satisfied; and

(7) (i) any Subsidiary existing as of the Issue Date that is listed as an Inactive Subsidiary on Exhibit E hereto (an “*Inactive Subsidiary*”) so long as (a) such Subsidiary is, and continues to be, a shell entity that (x) has assets of less than \$100,000, (y) has liabilities of less than \$100,000 and (z) is not engaged in any business and (b) such Subsidiary does not own any direct or indirect equity interest in a Subsidiary Guarantor or

any other Person that owns Property Collateral and (ii) The Pavilion Collecting Agent, LLC and the Hammock Landing Collecting Agent, LLC (each a “*Specified Subsidiary*”) so long as the Specified Subsidiary continues to be used solely as a conduit for the collection of certain taxes and fees which are then substantially remitted to third parties; provided that if at any time such Subsidiary referenced in clause (i) fails to meet any of the conditions in clauses (a) and (b) of clause (i) or the Specified Subsidiary no longer acts in the capacity referred to in clause (ii) and fails to meet any of the conditions in clauses (a) and (b) of clause (i), then within 30 days of such time the Company shall cause such Subsidiary to become a Subsidiary Guarantor as if such Subsidiary had become a new Subsidiary of the Company in accordance with Section 4.07 of this Indenture.

“*Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock*” means:

- (1) [reserved];
- (2) the Capital Stock in any Excluded Non-Guarantor Subsidiary:
 - (A) referred to in clauses (1) and (2) of the definition of Excluded Non-Guarantor Subsidiary;
 - (B) referred to in clause (4) of the definition of Excluded Non-Guarantor Subsidiary but only if and so long as (x) the Property owned by such Subsidiary is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(3) or Recourse Indebtedness incurred pursuant to Section 4.02(b)(14), (y) the pledge of such Capital Stock to secure the Secured Obligations is not permitted by the agreements governing the related Indebtedness or Refinancing Indebtedness referred to therein, and (z) the Release Condition has been satisfied; or
 - (C) referred to in clause (5) of the definition of Excluded Non-Guarantor Subsidiary but only if such Capital Stock is released pursuant to Section 12.05(8)(iii);
 - (D) referred to in clause (6) of the definition of Excluded Non-Guarantor Subsidiary but only if and so long as (x) the Property owned by such Subsidiary is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4) or Recourse Indebtedness incurred pursuant to Section 4.02(b)(14), (y) the pledge of such Capital Stock to secure the Secured Obligations is not permitted by the agreements governing the related Indebtedness or Refinancing Indebtedness referred to therein, and (z) the Release Condition has been satisfied;
- (3) the Capital Stock in any Joint Venture that owns solely a Property (or Properties) set forth in Category 4 on Annex I hereto; and
- (4) the Capital Stock in any Joint Venture that owns solely a Property (or Properties) set forth in Category 7 on Annex I hereto.

“*Excluded Other Property*” means any personal property to the extent (any only so long as) constituting “Excluded Property” (as defined in the Security Documents).

“*Excluded Property*” means any Excluded Initial Property, Excluded After-Acquired Property, Excluded Other Property, Excluded Released Property or Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock.

“*Excluded Released Property*” means:

(1) the Capital Stock in any Excluded Non-Guarantor Subsidiary referred to in either (a) clauses (2)(B) or (D) of the definition of Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock or (b) clause (2)(C) of such definition;

(2) any asset (x) constituting a Property that either (A) was Collateral Property on the Issue Date and is set forth in Category 1 on Annex I hereto or (B) became Collateral Property after the Issue Date upon the acquisition thereof pursuant to Section 4.14 and (y) Liens on which securing the Secured Obligations were released at the time Liens were granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4) and in compliance with Section 4.04 and Section 12.05;

(3) any Property set forth in Category 3 or Category 4 on Annex I hereto at the time Permitted Liens were granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(3) or (9) and in compliance with Section 4.04; or

(4) any Property constituting Undeveloped Property that is contributed to a Joint Venture in which a Subsidiary holds an ownership interest in connection with the formation of such Joint Venture; provided that (i) the sole asset of such Subsidiary is Capital Stock in such Joint Venture; (ii) the Company uses commercially reasonable efforts in good faith to cause the pledge of the Capital Stock in such Subsidiary to be permitted by the agreements governing such Joint Venture and any agreement governing Indebtedness of such Joint Venture, and, solely to the extent permitted pursuant to such commercially reasonable efforts in good faith, the Capital Stock in such Subsidiary is pledged as Collateral and, to the extent such Capital Stock is After-Acquired Property, the provisions of Section 4.14 are complied with; and (iii) the provisions of Section 4.07 are complied with in respect of such Subsidiary such that such Subsidiary is or becomes a Subsidiary Guarantor.

“*Fair Market Value*” means, with respect to any Asset Sale or other transaction, the price that would be negotiated in an arm’s-length transaction between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as such price is determined in good faith by:

(1) if the value of such Asset Sale or other transaction is less than \$10.0 million, an Officer of the Company; and

(2) if the value of such Asset Sale or other transaction is \$10.0 million or greater, the Boards of Directors of both the Company and the REIT.

“*Future Joint Venture*” means any Person (other than any Person that is, or becomes, a Wholly-Owned Subsidiary of the Company), in which the Company or any Subsidiary of the Company holds or acquires an ownership interest (whether by way of Capital Stock or otherwise) that meets the following conditions: (1) such Person has been established in the ordinary course of business and consistent with past practice as the Initial Joint Ventures in connection with the acquisition or development of property and/or other assets used or useful in a Related Business (as determined in good faith by the Company); (2) the Company or any Subsidiary of the Company is party to a customary joint venture agreement and related arrangements on customary and reasonable terms consistent with past practice as the Initial Joint Ventures and market terms at such time; (3) the ownership interest (whether by way of Capital Stock or otherwise) in such Person that is not owned by the Company or any Subsidiary of the Company is held by a third party that is not an Affiliate of the Company or the REIT and such third party has purchased its ownership interest in such Person for good and valuable consideration (as determined in good faith by the Company); and (4) to the extent such Person would otherwise meet the criteria established in the definition of Subsidiary, the designation of such Person as a Joint Venture in lieu of a Subsidiary shall be evidenced to the Trustee by the Company providing an Officer’s Certificate within 30 days after the creation or acquisition of such Person certifying that the designation of such Person as a Joint Venture complied with the foregoing provisions.

“*GAAP*” means generally accepted accounting principles in the United States of America as in effect as of the date of determination, including those set forth in:

- (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants;
- (2) statements and pronouncements of the Financial Accounting Standards Board; and
- (3) such other statements by such other entity as approved by a significant segment of the accounting profession.

“*Grantor*” means, for purposes of the Collateral Agency and Intercreditor Agreement, the Company and each Subsidiary of the Company that has granted any Lien in favor of the Collateral Agent on any of its assets or properties to secure any of the Secured Obligations.

“*Guarantee*” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or
- (2) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“*Guarantor*” means each of (i) the Operating Partnership; (ii) a Subsidiary of the Company that executes this Indenture as a guarantor on the Issue Date and each other Subsidiary of the Company that thereafter guarantees the Securities pursuant to the terms of this Indenture (including pursuant to any Guaranty Supplemental Indenture); and (iii) any Person duly becoming a successor to any such Guarantor pursuant to Section 5.01(b), in each case until such time as any such Guarantor shall be released and relieved of its obligations pursuant to Section 10.05 hereof. For the avoidance of doubt, as used in this Indenture, the term “Guarantor” includes the Operating Partnership and the Subsidiary Guarantors but does not include the REIT.

“*Guaranty Supplemental Indenture*” means a supplemental indenture, substantially in the form attached hereto as Exhibit B, pursuant to which a Person that becomes a Subsidiary of the Company after the Issue Date guarantees the Company’s obligations with respect to the Securities on the terms provided for in this Indenture.

“*Hedging Obligations*” means, with respect to any Person, (1) the obligations of such Person under currency, exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements and (2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

“*Holder*” or “*Securityholder*” means the Person in whose name a Security is registered in the Security Register.

“*Incur*” means issue, assume, Guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. The term “Incurrence” when used as a noun shall have a correlative meaning. Solely for purposes of determining compliance with Section 4.02:

- (1) amortization of debt discount or the accretion of principal with respect to a non-interest bearing or other discount security;
- (2) the accrual of interest or dividends and the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms; and
- (3) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Indebtedness;

in each case, shall not be deemed to be the Incurrence of Indebtedness.

“*Indebtedness*” means, with respect to any Person on any date of determination (without duplication):

(1) the principal in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(2) all Capital Lease Obligations of such Person;

(3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding any accounts payable or other liability to trade creditors arising in the ordinary course of business);

(4) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers’ acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(5) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of such Person or, with respect to any Preferred Stock of any Subsidiary of such Person, the principal amount of such Preferred Stock to be determined in accordance with this Indenture (but excluding, in each case, any accrued dividends);

(6) all obligations of the type referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee; and

(7) all obligations of the type referred to in clauses (1) through (6) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the Fair Market Value of such property or assets and the amount of the obligation so secured.

Notwithstanding the foregoing, in connection with the purchase by the Company or any Subsidiary of any business, the term “*Indebtedness*” shall exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided, however, that, at the time of closing, the amount of any such payment is not

determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all obligations as described above; provided, however, that in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time shall be the accreted value thereof at such time.

“*Indenture*” means this Indenture, as amended or supplemented from time to time (including as amended and supplemented by any Guaranty Supplemental Indenture).

“*Initial Joint Ventures*” means each of the Joint Ventures existing as of the Issue Date that are listed on Exhibit D hereto; provided that upon any Initial Joint Venture becoming a Wholly Owned Subsidiary of the Company, such Person ceases to be a Joint Venture and shall automatically become a Subsidiary.

“*Interest Payment Date*” means the maturity date of an installment of interest on the Securities.

“*Issue Date*” means [November 1], 2021, the first date on which the Securities are issued, authenticated and delivered under this Indenture.

“*Issue Date Redemption*” means the redemption of \$60.0 million aggregate principal amount of Securities on [November 8], 2021 pursuant to Section 3.07(c).

“*Issue Date Redemption Notice*” means the notice of redemption, if any, delivered on the Issue Date pursuant to Section 3.03 with respect to the Issue Date Redemption.

“*Issue Date Opinions*” means the Opinions of Counsel delivered to the Trustee and the Collateral Agent as specified in Section 12.02(b)(1).

“*Joint Venture*” means any Person that is an Initial Joint Venture or a Future Joint Venture; provided that (i) upon a Joint Venture becoming a Wholly Owned Subsidiary of the Company, such Person ceases to be a Joint Venture and automatically becomes a Subsidiary and (ii) upon the Company or a Subsidiary of the Company ceasing to hold any ownership interest (whether by way of Capital Stock or otherwise) in such Joint Venture in a transaction that complies with the terms of this Indenture, such Person ceases to be a Joint Venture. Unless otherwise indicated in this Indenture, all references to a Joint Venture shall mean a Joint Venture of the Company or any Subsidiary of the Company.

“*Joint Venture Disposition*” means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) directly or indirectly by a Joint Venture, including (x) any disposition by means of a merger, consolidation or similar transaction, (y) any Event of Loss, Casualty, Condemnation or seizure or settlement in lieu thereof, or other loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title or use and (z) a disposition in connection with a Sale and Leaseback Transaction of any Property.

“*Junior Lien*” means a Lien, junior to the Liens on the Collateral securing the Secured Obligations as provided in the Collateral Agency and Intercreditor Agreement, granted by the Company or any Guarantor in favor of holders of Junior Lien Debt (or any Junior Lien Representative in connection therewith), at any time, upon any property of the Company or any Guarantor to secure Junior Lien Obligations; provided such Lien is permitted to be incurred under this Indenture.

“*Junior Lien Debt*” means the aggregate Indebtedness outstanding under each Junior Lien Document that is permitted to be incurred pursuant to this Indenture, the Security Documents and the Junior Lien Intercreditor Agreement.

“*Junior Lien Documents*” means, collectively, all indentures, credit agreements, loan documents, notes, guarantees, instruments, documents and agreements governing or evidencing, or executed or delivered in connection with, each Junior Lien facility, or pursuant to which Junior Lien Debt is incurred and the documents pursuant to which Junior Lien Obligations are granted.

“*Junior Lien Intercreditor Agreement*” means an intercreditor agreement, substantially in the form of Exhibit [B] to the Collateral Agency and Intercreditor Agreement, executed among the Collateral Agent, each Junior Lien Representative and the Company and the other parties from time to time party thereto as it may be amended, restated, supplemented or otherwise modified from time to time in accordance with this Indenture.

“*Junior Lien Obligations*” means Junior Lien Debt and all other Obligations in respect thereof.

“*Junior Lien Representative*” means in the case of any issuance or series of Junior Lien Debt, the trustee, agent or representative of the holders of such Junior Lien Debt who maintains the transfer register for such Junior Lien Debt and is appointed as a representative of such Junior Lien Debt (for purposes related to the administration of the security documents) pursuant to the Junior Lien Documents governing such Junior Lien Debt, together with its successors in such capacity.

“*Legal Holiday*” means a Saturday, a Sunday or a day on which banking institutions are not required to be open in the State of New York.

“*Lien*” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“*Limited Guarantee*” means the limited guarantee of the REIT with respect to the Securities pursuant to Article 13 of this Indenture.

“*Maturity Date*” means [November 15,] 2029, the fixed date on which the principal of the Securities is due and payable.

“*Modified Cash NOP*” means, for any given period, the sum of the following (without duplication):

(1) rents and other revenues recognized in the ordinary course from real property (including proceeds of rent loss or business interruption insurance and lease buyout, but excluding (i) pre-paid rents and revenues and security deposits except to the extent applied in satisfaction of tenants’ obligations for rent including write-off of debt, and (ii) any amounts related to the amortization of above and below market rents, straight line rents, and write-off of landlord inducements; minus

(2) all operating expenses determined in accordance with GAAP (excluding interest and depreciation expense) related to the ownership, operation or maintenance of such real property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such real property, but specifically excluding general overhead expenses of the Operating Partnership and its Subsidiaries and any actual or imputed property management fees).

“*Moody’s*” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“*Mortgages*” means all mortgages, deeds of trust and similar documents, instruments and agreements (and all amendments, modifications and supplements thereof) creating, evidencing, perfecting or otherwise establishing the Liens on Collateral Property and other related assets to secure payment of the Secured Obligations or any part thereof.

“*Negative Pledge*” means, with respect to a given asset, any provision of a document, instrument or agreement which prohibits or purports to prohibit the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that an agreement that conditions a Person’s ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person’s ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, shall not constitute a Negative Pledge.

“*Net Available Cash*” from an Asset Sale, a Joint Venture Disposition or a Release Trigger Event, as applicable, means cash payments actually received by the Company or any Subsidiary of the Company therefrom (including (in the case of an Asset Sale or a Joint Venture Disposition) any cash payments received by way of deferred payment of principal pursuant to a note or instalment receivable or otherwise and proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, and including (in the case of any Event of Loss) any insurance proceeds, proceeds of any Condemnation, damages awarded by any judgment or other amounts received on or in respect of the Collateral subject to the Event of Loss, and including (in the case of a Release Trigger Event) all cash proceeds of any Indebtedness Incurred as part of or in connection with such Release Trigger Event but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other

obligations relating to such properties or assets or received in any other non-cash form), in each case net of:

(1) all legal, title, recording, engineering, environmental, accounting, investment banking, brokerage and relocation expenses, commissions and other fees and expenses Incurred, and all Federal, state, provincial, foreign and local taxes required to be paid or accrued as a liability under GAAP, as a consequence of such Asset Sale or Release Trigger Event, as applicable;

(2) all payments made on any Indebtedness (other than Secured Obligations, Subordinated Obligations or Junior Lien Debt) which is secured by any assets subject to such Asset Sale or Release Trigger Event, as applicable, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale or Release Trigger Event, as applicable, or by applicable law, be repaid out of the proceeds from such Asset Sale or Release Trigger Event, as applicable;

(3) all distributions and other payments required to be made to interest holders (other than the Company or any Subsidiary) in Joint Ventures as a result of such Asset Sale or Release Trigger Event, as applicable;

(4) the deduction of appropriate amounts as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such Asset Sale and retained by the Company or any Subsidiary after such Asset Sale;

(5) any portion of the purchase price from an Asset Sale placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Sale or otherwise in connection with that Asset Sale provided, however, that upon the termination of that escrow, Net Available Cash shall be increased by any portion of funds in the escrow that are released to the Company or any Subsidiary;

(6) with respect to an Asset Sale of any Property, any continuing or unsatisfied obligations of the Company or any Subsidiary to tenants of such Property; and

(7) any payments made after the Issue Date on any Indebtedness (other than Secured Obligations, Subordinated Obligations or Junior Lien Debt) resulting in the payment in full or retirement of such Indebtedness prior to such Asset Sale or Release Trigger Event.

“*New Bank Claim Borrower*” means CBL & Associates Holdco I, LLC and its successors and assigns.

“*New Bank Term Loan Facility*” means the Amended and Restated Credit Agreement, dated as of [November 1], 2021 by and among the New Bank Claim Borrower, as borrower, each of the financial institutions signatory thereto, together with their successors and assignees, and Wells Fargo Bank, National Association, as administrative agent, as amended, restated, amended and

restated, modified, renewed, refunded, restructured, supplemented, replaced or refinanced from time to time in whole or in part from time to time.

“*Non-Recourse Mortgage Indebtedness*” means, with respect to (i) any Subsidiary that owns solely a Property (or Properties) or (ii) any Capital Stock of such Subsidiary, Indebtedness secured solely by a Permitted Lien on such Property or such Capital Stock (provided that individual financings provided by one lender or group of lenders may be cross collateralized to other financings provided by such lenders or their affiliates) that is (1) non-recourse to such Subsidiary, other than with respect to such Property or, as applicable, the Capital Stock in such Subsidiary, and (2) non-recourse to the Company or any other Subsidiary (other than such Subsidiary that owns such Property or such Capital Stock to the extent of such Property or such Capital Stock); except, in the case of clauses (i) and (ii), for indemnities and limited contingent guarantees arising from “bad act” recourse trigger provisions found in secured real estate financing transactions and other customary “non-recourse carveout” guaranties.

“*Note Documents*” means this Indenture, the Securities, and the Security Documents.

“*Note Guarantee*” means the joint and several guarantee pursuant to Article 10 hereof by a Guarantor of the Company’s obligations with respect to the Securities and the other Note Documents.

“*Notes Obligations*” means the Obligations of the Company and the Guarantors with respect to the Securities and the Note Guarantees and all other obligations of the Company and the Guarantors to the Holders or the Trustee and/or the Collateral Agent under the Note Documents, according to the terms hereunder or thereunder.

“*Obligations*” means, with respect to any Indebtedness, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, and other amounts payable pursuant to the documentation governing such Indebtedness.

“*Officer*” means the Chairman, the Chief Executive Officer, the President, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, the REIT, CBL Holdings I, Inc., or the Guarantors, as applicable.

“*Officer’s Certificate*” means a certificate signed by an Officer of the Company (or of the general partner of the managing member of the Company) or the REIT, as applicable, which certificate shall be deemed to be, and the Trustee may rely on its being, executed and delivered by the Officer signing it on behalf of the Company or the REIT, as applicable, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee. Unless otherwise specified here, each reference to an Officer’s Certificate will refer to an Officer’s Certificate of the Company.

“*Operating Partnership*” means CBL & Associates Limited Partnership, as reorganized pursuant to the Plan of Reorganization, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “*Operating Partnership*” shall mean such successor Person.

“*Opinion of Counsel*” means a written opinion of counsel, who may be an employee of or counsel for the Company or other counsel who shall be reasonably acceptable to the Trustee, that, if required by the Trust Indenture Act, complies with the requirements of Section 314(e) of the Trust Indenture Act.

“*Other Secured Noteholders*” means the holders of notes issued pursuant to the Other Secured Notes Indenture.

“*Other Secured Notes*” means the Company’s 7.0% Exchangeable Senior Secured Notes due 2028 issued on the Issue Date.

“*Other Secured Notes Indenture*” means that certain indenture, dated as of the Issue Date, between the Company, the Guarantors party thereto from time to time, the REIT, and Wilmington Savings Fund Society, FSB, as Trustee and Wilmington Savings Fund Society, FSB, as Collateral Agent, relating to the Other Secured Notes.

“*Other Secured Notes Obligations*” means all Obligations under the Other Secured Notes Indenture and the Security Documents.

“*Other Secured Notes Trustee*” means Wilmington Savings Fund Society, FSB, as trustee under the Other Secured Notes Indenture.

“*Permitted Collateral Liens*” means any “Permitted Liens” other than Liens specified in clauses (2), (3), (4), (5), (14) or (18) of the definition of “Permitted Liens.”

“*Permitted Holders*” means (i) each of the Holders (as defined in the Registration Rights Agreement) that is a party to the Registration Rights Agreement and (ii) any Affiliates and Related Funds of the persons specified in clause (i) (other than the Company, the REIT or any Guarantor).

“*Permitted Liens*” means, with respect to any Person:

(1) Liens pursuant to the Security Documents to secure Indebtedness and related Obligations permitted under Section 4.02(b)(1);

(2) Liens to secure Non-Recourse Mortgage Indebtedness and related Obligations permitted under Section 4.02(b)(2), (3), (4), (7) or (8) so long as such Liens are limited to, and such Indebtedness and other Obligations are secured to the extent of any assets of the Company or any Subsidiary or Joint Venture solely by, the related Excluded Property referenced in the applicable subsection of Section 4.02(b);

(3) Liens to secure Non-Recourse Mortgage Indebtedness and related Obligations permitted under Section 4.02(b)(9) so long such Liens are limited to, and such Indebtedness and other Obligations are secured to the extent of any assets of the Company or any Guarantor solely by, the related Excluded Initial Property;

(4) Liens to secure Non-Recourse Mortgage Indebtedness and related Obligations permitted under Section 4.02(b)(10) so long such Liens are limited to, and such

Indebtedness and other Obligations are secured to the extent of any assets of the Company or any Guarantor solely by, the related Excluded After-Acquired Property;

(5) Liens existing on the Issue Date (including Liens on any Excluded Initial Property securing Indebtedness outstanding on the Issue Date and related Obligations permitted under Section 4.02(b)(2)) other than those specified in clauses (1) through (4) above;

(6) Liens securing Junior Lien Debt in an amount which, together with the aggregate outstanding amount of all other Indebtedness secured by Liens Incurred pursuant to this clause (6), does not exceed \$75.0 million, but solely so long as such Junior Liens are subject to the Junior Lien Intercreditor Agreement;

(7) Liens securing taxes, assessments and other charges or levies imposed by any governmental authority that are not more than 60 days overdue (or if more than 60 days overdue, are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP);

(8) statutory Liens of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business for amounts that are not more than 60 days overdue (or if more than 60 days overdue, are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP);

(9) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar applicable laws;

(10) Liens consisting of encumbrances in the nature of zoning restrictions, easements, survey exceptions, restrictions, encroachments, and rights or restrictions of record on the use of real property (including minor defects or irregularities in title and similar encumbrances), which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person or the ownership of such property (and for the avoidance of doubt, shall include any encumbrance listed on a title insurance policy that has been issued for the benefit of the Collateral Agent);

(11) the rights of tenants under leases or subleases not interfering with the ordinary conduct of business of such Person;

(12) Licenses of intellectual property granted in the ordinary course of business which do not materially detract from the value of such intellectual property or impair the intended use thereof in the business of such Person;

(13) Liens on property or other assets or shares of Capital Stock of a Person at the time such Person becomes a Subsidiary (or at the time the Company or any Subsidiary acquires such property, other assets or shares of Capital Stock, including any acquisition

by means of a merger, consolidation or other business combination transaction); provided, however, that such Liens are not created, Incurred or assumed in anticipation of or in connection with such other Person becoming a Subsidiary (or such acquisition of such property, other assets or Capital Stock); provided, further, that such Liens are limited to all or part of the same property, other assets or Capital Stock (plus improvements, accessions, proceeds or dividends or distributions in connection with the original property, other assets or Capital Stock) that secured (or, under the written arrangements under which such Liens arose, could secure) the obligations to which such Liens relate;

(14) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be Incurred and secured under this Indenture; provided that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness or other Obligations being refinanced or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;

(15) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any Joint Venture pursuant to any Joint Venture agreement governing such Joint Venture;

(16) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(17) Liens securing Hedging Obligations not Incurred in violation of this Indenture; and

(18) Liens on Recourse Property to secure Recourse Indebtedness permitted under Section 4.02(b)(14).

For purposes of this definition, the term “Indebtedness” shall be deemed to include interest on, and fees and expenses Incurred in connection with, such Indebtedness.

“*Person*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“*Preferred Stock*”, as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“*principal*” of a Security means the principal of the Security.

“*Pro Rata Percentage*” means, for the Securities or the Other Secured Notes, as applicable, as to any Asset Sale Trigger Event or Release Trigger Event, a fraction the numerator of which is

the principal amount of Securities outstanding or the principal amount of Other Secured Notes outstanding, respectively, on the date of the Asset Sale Trigger Event or Release Trigger Event, as applicable, and the denominator of which is the sum of the principal amount of Securities outstanding and the principal amount of Other Secured Notes outstanding, respectively, on such date.

“*Pro Rata Percentage Amount*” means, for the Securities or the Other Secured Notes, as to any Asset Sale Trigger Event or Release Trigger Event, the product of (i) the Pro Rata Percentage for the Securities or the Other Secured Notes, respectively, and (ii) the Asset Sale Excess Proceeds (in the case of an Asset Sale Trigger Event) or the Collateral Release Excess Proceeds (in the case of a Release Trigger Event).

“*Property*” means a parcel (or group of related parcels) of real property (whether developed or vacant) that is owned or leased under a ground lease by the Company, any Subsidiary or any Joint Venture.

“*Property Collateral*” means (i) any Collateral Property and (ii) any Collateral constituting Capital Stock in a Subsidiary Guarantor that directly or indirectly owns Collateral Property.

“*Purchase Money Obligations*” means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of Capital Stock of any Person owning such property or assets, or otherwise.

“*Real Property Collateral Requirements*” means, the requirement that the Collateral Agent shall have received, for each Property included in Category 1 on Annex I hereto and each After-Acquired Property that constitutes Property deemed to be in Category 1 on Annex I hereto (each a “*Mortgaged Property*” and collectively, the “*Mortgaged Properties*”), in form and substance satisfactory to Collateral Agent, and at the sole cost and expense of the Company: (A) evidence that a Mortgage substantially in the form attached as Exhibit C has been duly executed, acknowledged and delivered by the record owner or holder of such Mortgaged Property and is in form suitable for recording in all recording offices necessary or desirable to create a valid and subsisting perfected first priority Lien (subject only to Permitted Collateral Liens) on such Mortgaged Property in favor of the Collateral Agent as security for the Secured Obligations, and that such Mortgage has been duly received for recording in the appropriate recording office; (B) an extended coverage mortgagee title insurance policy, insuring the Lien of each such Mortgage as a valid Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Collateral Liens, together with such customary endorsements, coinsurance and reinsurance as the Collateral Agent may reasonably request, in an amount at least equal to the Fair Market Value of such Mortgaged Property, together with all affidavits, indemnities, certificates, and other instruments or financing statements required in connection with the issuance of such policy, together with any endorsements thereto reasonably required by the Collateral Agent; (C) a current American Land Title Association/National Society for Professional Surveyors survey; (D) a Phase I Environmental Site Assessment; (E) any estoppels, subordination, non-disturbance and attornment agreements from third parties relating to such Mortgage or Mortgaged Property reasonably deemed necessary or advisable by the Collateral Agent (but limited to parties to

reciprocal easement agreements, or tenants that lease more than 20,000 square feet of such Mortgaged Property) if such third parties are willing to deliver the same without material costs or burdensome conditions being imposed upon the Company in connection with the same; (F) a customary zoning report; (G) such existing appraisals, property condition reports, and other documents as the Collateral Agent may reasonably request; (H) if such information is not included on the survey, a flood insurance determination certificate, and if any improvements located on such Mortgaged Property are located in an area determined by the Federal Emergency Management Agency to have special flood hazards, evidence of flood insurance covering such Mortgaged Property in appropriate amount (or as may be required under applicable Law, including Regulation H of the Board of Governors); (I) such lien searches, tax certificates, and other documents as the Collateral Agent may reasonably request with respect to each such Mortgaged Property but only to the extent not already conducted or included as part of clauses (A) – (H); and (J) evidence of payment of any and all mortgage taxes, filing or recording fees and other similar charges and the costs and expenses of each of the foregoing requirements.

“*Recourse Indebtedness*” means, without duplication, that portion of any Indebtedness that is secured solely by a mortgage on any Property (or Properties) of any Subsidiary or Joint Venture or a Lien on the Capital Stock of such Subsidiary or Joint Venture, if required pursuant to the terms of such Indebtedness (such Property (or Properties) or Capital Stock, as applicable, “*Recourse Property*”), the principal amount of which has been guaranteed by (or is otherwise recourse to) the Company or any Subsidiary (other than such Subsidiary that owns such Property or such Capital Stock to the extent of such Property or such Capital Stock), but only with respect to such amount that has been guaranteed or is otherwise recourse to such Person, and, for the avoidance of doubt, excluding indemnities and limited contingent guarantees arising from “bad act” recourse trigger provisions found in secured real estate financing transactions and other customary “non-recourse carveout” guaranties.

“*Refinance*” means, in respect of any Indebtedness, to refinance, replace, extend, renew, refund, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. “*Refinanced*” and “*Refinancing*” shall have correlative meanings.

“*Refinancing Indebtedness*” means Indebtedness that Refinances any Indebtedness of the Company or any Subsidiary existing on the Issue Date or Incurred in compliance with this Indenture, including Indebtedness that Refinances Refinancing Indebtedness; provided, however, that:

- (1) (A) if the Stated Maturity of the Indebtedness being Refinanced is the same or earlier than the Stated Maturity of the Securities, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced and (B) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Securities, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Securities (provided that this clause (1) shall not apply to any Non-Recourse Mortgage Indebtedness or Recourse Indebtedness);

(2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced;

(3) the amount of such Indebtedness (other than with respect to Recourse Indebtedness and Non-Recourse Mortgage Indebtedness) that may be deemed Refinancing Indebtedness shall not exceed the aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding (plus fees and expenses, including any premium (including any premium paid in connection with a tender offer for such Indebtedness) and defeasance costs) under the Indebtedness being Refinanced; provided, however, (A) with respect to Recourse Indebtedness and Non-Recourse Mortgage Indebtedness if the amount of such Refinancing Indebtedness exceeds the aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) then outstanding (plus fees and expenses, including any premium (including any premium paid in connection with a tender offer for such Indebtedness) and defeasance costs) under the Indebtedness being Refinanced, then such excess will be deemed to be Net Available Cash from a Release Trigger Event and shall be applied in accordance with Section 4.04 and (B) with respect to Recourse Indebtedness, the aggregate principal amount of such Refinancing Indebtedness is permitted to be Incurred under Section 4.02(b)(14);

(4) if the Indebtedness being Refinanced is a Subordinated Obligation, such Refinancing Indebtedness is subordinate or junior in right of payment to the Securities at least to the same extent as the Subordinated Obligation being Refinanced;

(5) if the Indebtedness being Refinanced is Junior Lien Debt or any Junior Lien Obligation, such Refinancing Indebtedness is Junior Lien Debt, Junior Lien Obligations, unsecured Indebtedness or Subordinated Obligations;

(6) if the Indebtedness being Refinanced is Non-Recourse Mortgage Indebtedness, such Refinancing Indebtedness is Non-Recourse Mortgage Indebtedness;

(7) if the Indebtedness being Refinanced is Recourse Indebtedness, such Refinancing Indebtedness is either Recourse Indebtedness or Non-Recourse Mortgage Indebtedness; and

(8) if the Indebtedness being Refinanced is Acquired Debt, such Refinancing Indebtedness (A) is Incurred by the same obligors as the obligors of the Acquired Debt being Refinanced (and, if applicable, a newly-formed Subsidiary that does not own any Collateral or any other property or assets other than solely the Capital Stock of the Subsidiary that is the obligor of the Acquired Debt being Refinanced) and (B) shall not exceed the aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding (plus fees and expenses, including any premium (including any premium paid in connection with a tender offer for such Indebtedness) and defeasance costs) of the Acquired Debt being

Refinanced (including if the Acquired Debt being Refinanced is Recourse Indebtedness or Non-Recourse Mortgage Indebtedness).

provided, further, however, that Refinancing Indebtedness shall not include Indebtedness of a Subsidiary that Refinances Indebtedness of the Company.

“*Registration Rights Agreement*” means the Registration Rights Agreement, dated as of the Issue Date, by and among the REIT and the other parties signatory thereto (including by joinder agreement) as such agreement may be amended, modified or supplemented from time to time.

“*REIT*” means the Person named as the “REIT” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “REIT” shall mean such successor Person.

“*Related Business*” means any business in which the Company or any of the Subsidiaries was engaged on the Issue Date and any business related, ancillary or complementary to such business.

“*Related Fund*” means, with respect to any Person, any fund, account or investment vehicle that is controlled, advised, sub-advised, managed or co-managed by such Person, by any Affiliate of such Person, or, if applicable, such Person’s investment manager.

“*Release Condition*” means, in connection with the Incurrence of any Indebtedness pursuant to Sections 4.02(b)(3), (4), (7) or (14), the loan-to-value ratio as determined by an independent mortgage appraisal conducted on behalf of and for the benefit of the lender(s) of such Indebtedness shall be at least 50%.

“*Release Trigger Event*” means:

(1) with respect to any Subsidiary (A) that directly owns solely a Property (or Properties) set forth in Category 3 or Category 4 on Annex I hereto or (B) that directly owns solely Capital Stock in a Subsidiary that owns solely a Property (or Properties) set forth in Category 3 or Category 4 on Annex I hereto, the incurrence by such Subsidiary of Non-Recourse Mortgage Indebtedness permitted pursuant to Section 4.02(b)(3) or (9) and secured to the extent of any assets of such Subsidiary solely by Permitted Liens, and, in connection therewith such assets becoming Excluded Released Property; provided any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(2) with respect to any Subsidiary (A) that directly owns solely any Property set forth in Category 1 on Annex I hereto or (B) that directly owns solely Capital Stock in a Subsidiary that owns solely a Property (or Properties) set forth in Category 1 on Annex I hereto constituting Property Collateral that is to become Excluded Released Property as a result of such Release Trigger Event, the Incurrence by such Subsidiary owning such Property of Non-Recourse Mortgage Indebtedness permitted pursuant to Section 4.02(b)(4) and secured solely by assets of such Subsidiary and by such Capital Stock, solely to the extent of a Permitted Lien on such Excluded Released Property pursuant to clause (2) of

the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(3) the incurrence of Recourse Indebtedness pursuant to Section 4.02(b)(14);

(4) [reserved];

(5) with respect to a Subsidiary owning solely an ownership interest in a Joint Venture that owns solely any Property (or Properties) set forth in Category 4 or Category 7 on Annex I hereto, (i) the Incurrence by such Subsidiary of Indebtedness permitted pursuant to Section 4.02(b)(8) that (x) constitutes a Guarantee by such Subsidiary of Indebtedness Incurred by such Joint Venture to the extent constituting Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock; and (y) is secured by the Capital Stock held by such Subsidiary in such Joint Venture solely to the extent of a Permitted Lien on such Excluded Property incurred pursuant to clause (2) of the definition of Permitted Liens or (ii) the Incurrence by the Joint Venture of Indebtedness; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(6) with respect to any Subsidiary owning solely a Property (or Properties) constituting an Excluded Initial Property, the incurrence by such Subsidiary of Refinancing Indebtedness permitted pursuant to Section 4.02(b)(9) and secured solely by Permitted Liens on such Excluded Initial Property and, in connection therewith, the grant by such Subsidiary of Permitted Liens on such Excluded Initial Property to secure such Indebtedness; or

(7) with respect to any Subsidiary owning solely any Excluded After-Acquired Property, the incurrence by such Subsidiary of Non-Recourse Mortgage Indebtedness permitted pursuant to Section 4.02(b)(10) secured solely by Permitted Liens on such Excluded After-Acquired Property, and in connection therewith, the grant by such Subsidiary of Permitted Liens on such Excluded After-Acquired Property to secure such Non-Recourse Mortgage Indebtedness; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04.

No later than five (5) Business Days after a Release Trigger Event, the Company shall deliver to the Trustee an Officer's Certificate in respect thereof in accordance with Section 4.04.

"Sale and Leaseback Transaction" means any arrangement providing for the leasing by the Company or any of its Subsidiaries of any real or tangible personal property, which property has been sold or transferred by the Company or such Subsidiary to a third Person who is not an Affiliate of the REIT or the Company in contemplation of such leasing.

"SEC" means the U.S. Securities and Exchange Commission.

"Secured Debt Documents" means, collectively, (a) the Other Secured Notes Indenture and the Security Documents (as defined therein) and (b) this Indenture and the Security Documents.

“*Secured Obligations*” means, collectively, (a) the Other Secured Notes Obligations and (b) the Notes Obligations, in each case, to the extent such Obligations are required to be secured under the Secured Debt Documents.

“*Secured Parties*” means (a) the Collateral Agent, (b) the Other Secured Notes Trustee and the Other Secured Noteholders under the Other Secured Notes Indenture and (c) the Trustee and the Holders of the Securities.

“*Securities*” means 10% Senior Secured Notes due 2029 of the Company issued on the Issue Date.

“*Securities Act*” means the U.S. Securities Act of 1933, as amended.

“*Security Documents*” means the Collateral Agency and Intercreditor Agreement and one or more security agreements, factoring agreements, pledge agreements, collateral assignments, debentures, mortgages, assignments of leases and rents, deeds of covenants, collateral agency agreements, control agreements, deeds of trust or other grants or transfers for security (including any Mortgage) executed and delivered by the Company or any Guarantor creating (or purporting to create) a Lien in favor of the Collateral Agent upon the Collateral for purposes of securing the Secured Obligations including any Notes Obligations or Other Secured Notes Obligations of the Company or any Subsidiary Guarantor under the Secured Debt Documents or the Security Documents, in each case as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and the terms hereof.

“*Senior Indebtedness*” means with respect to any Person:

(1) Indebtedness of such Person, whether outstanding on the Issue Date or thereafter Incurred, including the Securities; and

(2) all other Obligations of such Person (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person whether or not post-filing interest is allowed in such proceeding) in respect of Indebtedness described in clause (1) above unless, in the case of clauses (1) and (2), in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such Indebtedness or other obligations are subordinate in right of payment to the Securities or the Note Guarantee of such Person, as the case may be; provided, however, that Senior Indebtedness shall not include:

- (A) any obligation of such Person to the Company or any Subsidiary;
- (B) any liability for Federal, state, local or other taxes owed or owing by such Person;
- (C) any accounts payable or other liability to trade creditors arising in the ordinary course of business;

(D) any Indebtedness or other Obligation of such Person which is subordinate or junior in right of payment to any other Indebtedness or other Obligation of such Person; or

(E) that portion of any Indebtedness which at the time of Incurrence is Incurred in violation of this Indenture.

“*Significant Subsidiary*” means any Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“*Specified Holders*” means (1) the Permitted Holders, (2) any controlling stockholder, controlling member, general partner, majority owned Subsidiary, or spouse or immediate family member (in the case of an individual) of any Specified Holder, (3) any estate, trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons holding a controlling interest of which consist solely of one or more Persons referred to in the immediately preceding clauses (1) and (2), (4) any executor, administrator, trustee, manager, director or other similar fiduciary of any Person referred to in the immediately preceding clause (3) acting solely in such capacity, (5) any investment fund or other entity controlled by, or under common control with, a Specified Holder or the principals that control a Specified Holder, or (6) upon the liquidation of any entity of the type described in the immediately preceding clause (5), the former partners or beneficial owners thereof.

“*Standard & Poor’s*” means S&P Global Ratings, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“*Stated Maturity*” means (i) with respect to the Securities, [November 15,], 2029, or (ii) with respect to any other security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

“*Subordinated Obligation*” means, with respect to a Person, any Indebtedness of such Person (whether outstanding on the Issue Date or thereafter Incurred) which is subordinate or junior in right of payment to the Securities or a Note Guarantee of such Person, as the case may be, pursuant to a written agreement to that effect.

“*Subsidiary*” means, with respect to the REIT, the Operating Partnership or the Company, (i) any Person (excluding an individual), a majority of the outstanding voting stock, partnership interests, membership interests or other equity interests, as the case may be, of which is owned or controlled, directly or indirectly, by the REIT, the Operating Partnership or the Company, as the case may be, and/or by one or more other Subsidiaries of the REIT, the Operating Partnership or the Company, as the case may be; and (ii) without limitation of clause (i), any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof). For the purposes of this definition, “voting stock, partnership interests, membership interests or other equity interests” means stock or interests

having voting power for the election of directors, trustees or managers (or similar members of the governing body of such person), as the case may be, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency. Unless otherwise indicated in this Indenture, all references to Subsidiary or Subsidiaries shall mean a Subsidiary or Subsidiaries of the Company. Notwithstanding the foregoing, a Person that meets and continues to meet the definition of a Joint Venture shall not be a Subsidiary.

“*Subsidiary Guarantor*” means the Guarantors that are Subsidiaries of the Company.

“*Temporary Cash Investments*” means any of the following:

(1) any investment in direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof;

(2) investments in demand and time deposit accounts, certificates of deposit and money market deposits maturing within 270 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any State thereof or any foreign country recognized by the United States of America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of \$50.0 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated “A” (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor;

(3) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (1) above entered into with a bank meeting the qualifications described in clause (2) above;

(4) investments in commercial paper, maturing not more than 180 days after the date of acquisition, issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of “P-1” (or higher) according to Moody’s or “A-1” (or higher) according to Standard & Poor’s;

(5) investments in securities with maturities of nine months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least “A” by Standard & Poor’s or “A” by Moody’s; and

(6) investments in money market funds that invest substantially all their assets in securities of the types described in clauses (1) through (5) above.

“*Trustee*” means Wilmington Savings Fund Society, FSB, in its capacity as trustee under this Indenture, until a successor replaces it in such capacity and, thereafter, means the successor.

“*Trust Indenture Act*” or “*TIA*” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the Issue Date.

“*Trust Officer*” means, when used with respect to the Trustee:

(1) any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such Person’s knowledge of and familiarity with the particular subject; and

(2) who shall have direct responsibility for the administration of this Indenture;

and when used with respect to the Collateral Agent, the corresponding officers of the Collateral Agent.

“*Undeveloped Property*” means at any time any vacant or undeveloped Property (or portion thereof that constitutes a separate and conveyable parcel, which may include a vacant building) for which there was no positive Modified Cash NOI for the most recently ended four fiscal quarters.

“*Uniform Commercial Code*” means the New York Uniform Commercial Code as in effect from time to time.

“*U.S. Government Obligations*” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer’s option.

“*U.S. Person*” means a U.S. Person as defined in Rule 902(k) under the Securities Act.

“*Vice President*,” when used with respect to the Company, the REIT or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “Vice President.”

“*Wholly Owned Subsidiary*” means a Subsidiary all the Capital Stock of which (other than directors’ qualifying shares) is owned by the Company or one or more other Wholly Owned Subsidiaries.

SECTION 1.02 Other Definitions.

Term	Defined in Section
“Affiliate Transaction”	Section 4.05
“Appendix”	Section 2.01
“Asset Sale Excess Proceeds Offer”	Section 4.03
“Asset Sale Excess Proceeds Offer Amount”	Section 4.03

“Asset Sale Excess Proceeds Offer Period”	Section 4.03
“Asset Sale Excess Proceeds Offer Price”	Section 4.03
“Asset Sale Excess Proceeds Offer Purchase Date”	Section 4.03
“Asset Sale Excess Proceeds Termination Date”	Section 4.03
“Asset Sale Trigger Event”	Section 4.03
“Bankruptcy Law”	Section 6.01
“CapEx Assets”	Section 4.03
“Collateral Release Excess Proceeds”	Section 4.04
“Collateral Release Excess Proceeds Redemption”	Section 4.04
“Collateral Release Excess Proceeds Redemption Date”	Section 4.04
“Collateral Release Excess Proceeds Redemption Price”	Section 4.04
“Company”	Recitals
“covenant defeasance option”	Section 8.01(b)
“Custodian”	Section 6.01
“Event of Default”	Section 6.01
“Excluded Release Trigger Events Proceeds”	Section 4.04
“Guaranteed Obligations”	Section 10.01
“Issue Date Redemption Cash”	Section 3.07(c)
“legal defeasance option”	Section 8.01(b)
“Mortgaged Property”	Section 1.01
“Paying Agent”	Section 2.03
“Pending Redemption Cash”	Section 4.04
“Pending Use Cash”	Section 4.03
“Permitted Excess Cash Use Assets”	Section 4.03
“Plan of Reorganization”	Recitals
“Recourse Property”	Section 1.01
“Registrar”	Section 2.03
“Related Business Assets”	Section 4.03
“Security Register”	Section 2.03
“Specified Property”	Section 4.03
“Successor Guarantor”	Section 5.01(b)(2)
“Trigger Release Replacement Property”	Section 4.04

Certain capitalized terms used herein shall have the meanings assigned to them in the Appendix.

SECTION 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“*indenture securities*” means the Securities and the Note Guarantees;

“*indenture security holder*” means a Securityholder;

“*indenture to be qualified*” means this Indenture;

“*indenture trustee*” or “*institutional trustee*” means the Trustee; and

“*obligor*” on the Securities and Note Guarantees means the Company, the Guarantors and the REIT, respectively, and any successor obligor upon the Securities, the Note Guarantees and the Limited Guarantee, respectively.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

SECTION 1.04 Rules of Construction. Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) “including” means including without limitation;
- (5) words in the singular include the plural and words in the plural include the singular;
- (6) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;
- (7) the principal amount of any Preferred Stock shall be (A) the maximum liquidation value of such Preferred Stock or (B) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater;
- (8) all references to the date the Securities were originally issued shall refer to the Issue Date;
- (9) this Indenture shall not treat (A) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (B) Senior Indebtedness as subordinated or junior to any other Senior Indebtedness merely because it has a junior priority with respect to the same collateral or because it is guaranteed by other obligors;
- (10) provisions apply to successive events and transactions;
- (11) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole (as amended or supplemented from time to time) and not to any particular Article, Section or other subdivision of this Indenture;

(12) any reference to “duly provided for” and other words of similar import with respect to any amount of property required to be paid or delivered, as applicable, shall include, without limitation, having made such amount or property available for payment or delivery;

(13) unless otherwise provided in this Indenture or in any Security, the words “execute”, “execution”, “signed”, and “signature” and words of similar import used in or related to any document to be signed in connection with this Indenture, any Security or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other similar state laws based on the Uniform Electronic Transactions Act, provided that, notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to procedures approved by the Trustee; and

(14) the terms “given”, “mailed”, “notify” or “sent” with respect to any notice to be given to a Holder pursuant to this Indenture, shall mean notice (x) given to the Depository (or its designee) pursuant to the Applicable Procedures (in the case of a Global Security) or (y) mailed to such Holder by first class mail, postage prepaid, at its address as it appears on the Security Register (in the case of a Definitive Security), in each case, in accordance with Section 11.02. Notice so “given” shall be deemed to include any notice to be “mailed” or “delivered,” as applicable, under this Indenture.

ARTICLE 2

The Securities

SECTION 2.01 Form and Dating.

Certain provisions relating to the Securities are set forth in the Appendix attached hereto (the “*Appendix*”), which is hereby incorporated in, and expressly made a part of, the Indenture. The Securities and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A, which is hereby incorporated in, and expressly made a part of, this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company or any Guarantor is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Security shall be dated the date of its authentication. The Securities shall be in minimum denominations of \$1.00 and integral multiples of \$1.00 thereof. The terms and provisions contained in the Securities shall constitute, and are hereby expressly made, a part of this Indenture and each of the Company, the Guarantors, the REIT and the Trustee, by their execution and delivery of this Indenture, expressly agrees to such terms and provisions and to be bound thereby. However, to the extent any provision

of any Security conflicts with the express provisions of the Indenture, the provisions of this Indenture shall govern and be controlling.

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is limited to \$455,000,000, and the Company may not “re-open” this Indenture to issue additional Securities after the Issue Date, in each case, except for Securities issued upon registration of transfer of, or exchange for, or in lieu of other Securities pursuant to Sections 2.06, 2.07, 2.09, 3.06, 4.03, 4.04 or 9.05 or pursuant to Sections 2.3 or 2.4 of the Appendix.

SECTION 2.02 Execution and Authentication. An Officer of the Company shall sign the Securities for the Company by manual, facsimile or other electronic signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The manual signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall, upon the written direction of the Company, authenticate and make available for delivery Securities, as set forth in Section 2.2 of the Appendix.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate the Securities. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Company. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 2.03 Registrar and Paying Agent. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange for other Securities (the “*Registrar*”) and an office or agency where Securities may be presented for payment (the “*Paying Agent*”). The Registrar shall keep a register (the “*Security Register*”) of the Securities and of their transfer and exchange. The Company may have one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrar; and the term “Paying Agent” includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any Wholly Owned Subsidiary incorporated or organized within the United States of America may act as Paying Agent, Registrar, co-registrar or transfer agent.

The Company initially appoints the Trustee as Registrar and Paying Agent in connection with the Securities and the Trustee accepts such appointment as the initial Registrar and Paying Agent.

The Company may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; provided, however, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Company and the Trustee, in which case the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor; provided, however, that the Trustee may resign as Paying Agent or Registrar only if the Trustee also resigns as Trustee in accordance with Section 7.08.

With respect to any Global Securities, the Corporate Trust Office of the Trustee shall be the office of agency where such Global Securities may be presented or surrendered for payment or for registration of transfer or exchange, or where successor Securities may be delivered in exchange therefor; provided, however, that any such presentation, surrender or delivery effected pursuant to the Applicable Procedures of the Depository shall be deemed to have been effected at such office or agency in accordance with the provisions of this Indenture.

Whenever any Security is held by a Holder that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, then it is the intention of the Company and such Holder that (x) all interest accrued and paid on such Security will be eligible to qualify for exemption from United States withholding tax (excluding United States withholding tax imposed by Sections 1471 through 1474 of the Code (“FATCA”)) as “portfolio interest” because such Security is an obligation which is in “registered form” within the meaning of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code (or any successor provision thereto) and the applicable Treasury Regulations promulgated thereunder, and (y) as such, to the extent the requirements relating to the “portfolio interest” exemption are satisfied, all interest accrued and paid on this Security will be exempt from United States information reporting under Sections 6041 and 6049 of the Code and United States backup withholding under Section 3406 of the Code. The Company (or its agents), on the one hand, and the applicable Holder, on the other, shall reasonably cooperate with one another, and execute and file such forms or other documents, or do or refrain from doing such other acts, as may be required, to secure exemption from United States withholding tax (including FATCA), information reporting, and backup withholding, as applicable. In furtherance of the foregoing, any Holder, transferee or assignee Holder may from time to time provide (x) any applicable U.S. Internal Revenue Service (“IRS”) Form W-9, W-8BEN, W-8BEN-E, W-8ECI or W-8IMY (with any applicable attachments) or applicable successor form, and (y) to the extent such Holder, transferee or assignee Holder, or the beneficial owner of the Security, as applicable, is not a United States person and is claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate reasonably satisfactory to the Company to the effect that such Holder, transferee or assignee Holder, or the beneficial owner of the Security, as applicable, is not (i) a “10-percent shareholder” of the Company within the meaning of Section 871(h)(3)(B) of the Code, (ii) a “controlled foreign corporation” related to the Company as described in Section 881(c)(3)(C), or (iii) a “bank”

extending credit to the Company in the ordinary course of its trade or business as described in Section 881(c)(3)(A). The Company shall take into account such documentation in good faith.

SECTION 2.04 Paying Agent to Hold Money in Trust. Prior to each due date of the principal and interest or premium on any Security, the Company shall deposit with the Paying Agent (or if the Company or a Wholly Owned Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest and premium, when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders and the Trustee and the Collateral Agent all money held by the Paying Agent for the payment of principal of or cash interest on the Securities and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the Trustee. Upon any Event of Default specified in Section 6.01(6) or (7), the Trustee shall automatically serve as the Paying Agent for the Securities.

SECTION 2.05 Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders and the Company shall otherwise comply with TIA § 312(a).

SECTION 2.06 Transfer and Exchange. The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer in compliance with the Appendix. When a Security is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of this Indenture and Section 8-401(a) of the Uniform Commercial Code are met. When Securities are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges for other Securities, the Company shall execute and the Trustee shall authenticate Securities at the Company's request. The Company may require the Securityholders to make a payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges not involving any transfer pursuant to Sections 2.06, 2.07, 2.09, 3.06, 4.03 and 9.05 of this Indenture or Sections 2.3 or 2.4 of the Appendix). The Company shall not be required to make and the Registrar need not register transfers or exchanges of Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or any Securities for a period of 15 days before a selection of Securities to be redeemed or 15 days before an Interest Payment Date.

Prior to the due presentation for registration of transfer of any Security, the Company, the REIT, the Guarantors, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Company, the REIT, the Guarantors, the Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

Any holder of a beneficial interest in a Global Security shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in the Global Security may be effected only through a book-entry system maintained by (a) the holder of such Global Security (or its agent) or (b) any holder of a beneficial interest in such Global Security, and that ownership of a beneficial interest in such Global Security shall be required to be reflected in a book entry.

All Securities issued upon any transfer or exchange for other Securities pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

SECTION 2.07 Replacement Securities. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee, upon the Company's written instruction, shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met and the Holder (a) satisfies the Company and the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Company and the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code and (c) satisfies any other reasonable requirements of the Company, the REIT, the Guarantors and the Trustee. If required by the Trustee or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company to protect the Company, the REIT, the Guarantors, the Trustee, the Paying Agent, the Registrar and any co-registrar and in the judgment of the Trustee to protect the Trustee, the Paying Agent, the Registrar and any of the Trustee's agents from any loss which any of them may suffer if a Security is replaced. The Company and the Trustee may charge the Holder for their expenses in replacing a Security (including without limitation attorneys' fees and disbursements in replacing such Security). Every replacement Security is an additional Obligation of the Company.

The provisions of this Section 2.07 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Securities.

SECTION 2.08 Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation and those described in this Section as not outstanding. Subject to Section 11.06, a Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or repurchase date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or repurchased or maturing, as the case may be, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.09 Temporary Securities. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the Company, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities.

SECTION 2.10 Cancellation. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange for other Securities or payment. The Trustee and no one else shall cancel and destroy (subject to the record retention requirements of the Exchange Act) all Securities surrendered for registration of transfer, exchange for other Securities, payment or cancellation in accordance with the Trustee's customary procedures and, upon written request, deliver a certificate of such destruction to the Company. The Company may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of cancelled Securities other than pursuant to the terms of this Indenture.

SECTION 2.11 Defaulted Interest. If the Company defaults in a payment of interest on the Securities, the Company shall pay defaulted interest at the rate per annum shown on the Security (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the persons who are Securityholders on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date and shall promptly deliver or cause to be delivered to each affected Securityholder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

SECTION 2.12 CUSIP Numbers, ISINs, etc. The Company in issuing the Securities may use "CUSIP" numbers and ISINs (in each case if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers and ISINs in notices as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice shall not be

affected by any defect in or omission of such numbers. The Company shall advise the Trustee in writing of any change in any “CUSIP” numbers or ISINs applicable to the Securities.

SECTION 2.13 Calculation of Specified Percentage of Securities. With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Securities, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of the Securities, the Holders of which have so consented by (b) the aggregate principal amount, as of such date of determination, of the Securities then outstanding, in each case, as determined in accordance with Section 2.08 and Section 11.06 of this Indenture. Any such calculation made pursuant to this Section 2.13 shall be made by the Company and delivered to the Trustee in an Officer’s Certificate. The Trustee may rely conclusively on the calculations and information provided to them by the Company in such certificates, and will have no responsibility to make calculations under this Indenture.

SECTION 2.14 Withholding. Notwithstanding anything to the contrary herein, at the Maturity Date, upon earlier repurchase of the Securities or at any time a payment is made with respect to the Securities, and as otherwise required by law, the Company, the Trustee, the Paying Agent or the Exchange Agent (as applicable) may deduct and withhold from any amounts otherwise payable to the Holder the amounts required to be deducted and withheld under applicable law, and such deducted or withheld amounts shall be deemed paid to such Holder for all purposes of this Indenture.

ARTICLE 3

Redemption

SECTION 3.01 Notices to Trustee. If the Company elects to redeem Securities pursuant to Section 3.08 or is required to redeem Securities pursuant to the mandatory redemption provision of Section 4.04 hereof, the Company shall notify the Trustee in writing of the redemption date, the principal amount of Securities to be redeemed and the Section of this Indenture pursuant to which the redemption will occur.

The Company shall give the notice to the Trustee provided for in this Section at least 15 days before the redemption date unless the Trustee consents to a shorter period. Such notice shall be accompanied by an Officer’s Certificate from the Company to the effect that such redemption will comply with the conditions herein. Any such notice to the Trustee may be cancelled by the Company at any time prior to the mailing of notice of redemption to the Holders and shall thereby be void and of no effect.

SECTION 3.02 Selection of Securities To Be Redeemed. If fewer than all the Securities are to be redeemed pursuant to the notice sent pursuant to Section 3.03, the Trustee shall select the Securities to be redeemed pro rata to the extent practicable or otherwise in accordance with the Applicable Procedures of the Depository. The Trustee shall make the selection from outstanding Securities not previously called for redemption. Securities and portions of them the Trustee selects shall be in principal amounts of \$1.00 or whole multiples of \$1.00. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities

called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

SECTION 3.03 Notice of Redemption. The Company shall send a notice of redemption to each Holder whose Securities are to be redeemed (x) on the Issue Date in the form of the Issue Date Redemption Notice in connection with the Issue Date Redemption of Securities pursuant to Section 3.07(c) hereof or (y) at least (i) 10 days but not more than 60 days before a date for redemption of Securities pursuant to Section 3.08 hereof or (ii) 30 days but not more than 60 days before a date for redemption of Securities pursuant to Section 4.04 hereof. Such notice shall be sent to such Holder's registered address (with a copy to the Trustee), except that redemption notices may be mailed or otherwise delivered more than 60 days prior to the redemption date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of this Indenture pursuant to Article VIII.

The notice shall identify the Securities to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price;
- (3) the name and address of the Paying Agent;
- (4) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (5) if fewer than all the outstanding Securities are to be redeemed, the identification and principal amounts of the particular Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption, and that on and after the redemption date, upon surrender of any Security to be redeemed only in part, a new Security in principal amount equal to the unredeemed portion thereof shall be issued;
- (6) that unless the Company defaults in making such redemption payment, on the redemption date, the redemption price will become due and payable upon each Security of portion thereof to be redeemed and that interest on the Securities (or portion thereof) called for redemption will cease to accrue on and after the redemption date and the only remaining right of the Holders of such Securities on and after the redemption date is to receive payment of the redemption price upon surrender to the Paying Agent of the Securities redeemed;
- (7) the "CUSIP" number, ISIN or "Common Code" number, if any, printed on the Securities being redeemed; and
- (8) that no representation is made as to the correctness or accuracy of the "CUSIP" number, ISIN, or "Common Code" number, if any, listed in such notice or printed on the Securities.

In addition, (a) if such redemption is subject to satisfaction of one or more conditions precedent, such notice of redemption shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the stated redemption date, or by the redemption date as so delayed and (b) if such redemption is a mandatory redemption being made pursuant to Section 4.04 as the result of a Release Trigger Event, (x) the notice of redemption shall state that the principal amount of the Securities to be redeemed will equal the maximum principal amount of Securities for which the Collateral Release Excess Proceeds Redemption Price does not exceed an amount equal to the sum of the Pro Rata Percentage Amount applicable to the Securities (and specifying such amount) plus, depending on the extent to which Other Secured Notes are not tendered in the Collateral Release Excess Proceeds Offer being conducted substantially concurrently with such Collateral Release Excess Proceeds Redemption, an additional amount not to exceed the Pro Rata Percentage Amount applicable to the Other Secured Notes (and specifying such other amount), (y) the redemption date may be delayed at the Company's discretion until the Company is able to determine the Collateral Release Excess Proceeds Other Secured Notes Unused Amount, if any, that remains after consummation of the Collateral Release Excess Proceeds Offer made by the Company to Other Secured Noteholders pursuant to the Other Secured Notes Indenture; and (z) the Company shall provide at least five (5) Business Days' notice to the Trustee and the Holders of the principal amount of Securities to be redeemed and the redemption price therefor prior to the redemption date.

At the Company's request made at least five (5) Business Days prior to the date on which notices of redemption are to be sent (or such shorter period as may be agreed by the Trustee), the Trustee shall deliver the notice of redemption to the Holders in the Company's name and at the Company's expense. In such event, the Company shall provide the Trustee with the information required by this Section.

SECTION 3.04 Effect of Notice of Redemption. Once a notice of redemption is sent pursuant to Section 3.03, Securities called for redemption become due and payable on the redemption date and at the redemption price stated in the notice (except to the extent such redemption is conditional as set forth in Section 3.03) and from and after such redemption date (unless the Company defaults in the payment of the redemption price and accrued and unpaid interest), such Securities will cease to bear interest. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price stated in the notice, plus accrued interest to but not including the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the related Interest Payment Date), and such Securities shall be cancelled by the Trustee. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.05 Deposit of Redemption Price. Prior to 11:00 A.M. New York City time on the redemption date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued and unpaid interest on all Securities or portions thereof to be redeemed on that date other than Securities or portions of Securities called for redemption which have been delivered by the Company to the Trustee for cancellation.

SECTION 3.06 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company's expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

SECTION 3.07 Mandatory Redemption and Repurchases.

(a) Except as set forth under Section 4.04 hereof and Section 3.07(c) hereof, the Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Securities. Except as set forth under Section 4.03, the Company shall not be required to repurchase the Securities at the option of the Holders.

(b) Any mandatory redemption pursuant to Section 4.04 or Section 3.07(c) hereof shall be made in compliance with the provisions of Section 3.01 through Section 3.06 hereof. The redemption price for any mandatory redemption pursuant to Section 4.04 will be the redemption price set forth below (expressed in percentages of principal amount on the redemption date), plus accrued and unpaid interest to but excluding the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date), if redeemed during any of the periods set forth below:

Period	Redemption Price
[November 1], 2021 to [May 14], 2023	100.0%
[May 15], 2023 to [May 14], 2024	105.0%
[May 15], 2024 to [May 14], 2025	102.5%
[May 15], 2025 and thereafter	100.0%

(c) On [November 8, 2021], the Company shall mandatorily redeem \$60.0 million aggregate principal amount of the Securities in the Issue Date Redemption at a redemption price equal to (i) 100% of the principal amount of the Securities redeemed, plus (ii) accrued and unpaid interest to but excluding the redemption date of [November 8], 2021. In addition, (x) no later than the Issue Date, the Company shall cause cash in the amount of \$60.0 million (the "*Issue Date Redemption Cash*"), such amount being equal to the sum of (i) \$50.0 million in proceeds of the issuance of the New Money Convertible Notes referred to in the Plan of Reorganization and (ii) \$10.0 million in proceeds from the sale approved by the Bankruptcy Court on September 10, 2021 of the Pearland Town Center -- Residences, in each case, to be deposited directly by the Company in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and (y) the Issue Date Redemption Cash will constitute Collateral pending application to the redemption of Securities in the Issue Date Redemption on [November 8], 2021.

SECTION 3.08 Optional Redemption.

(a) Except as set forth in Section 3.08(b) and Section 3.08(c) below, the Company shall not be entitled to redeem or otherwise prepay the Securities at its option.

(b) At any time prior to [May 15], 2023, the Company shall be entitled at its option to redeem all or a portion of the Securities upon not less than 10 nor more than 60 days' notice, at a redemption price equal to (i) 100% of the principal amount of the Securities redeemed, plus (ii) accrued and unpaid interest to but excluding the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date).

(c) On and after [May 15], 2023, the Company shall be entitled at its option to redeem all or a portion of the Securities upon not less than 10 nor more than 60 days' notice, at the redemption prices set forth below (expressed in percentages of principal amount on the redemption date), plus accrued and unpaid interest to but excluding the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date), if redeemed during any of the periods set forth below:

Period	Redemption Price
[May 15], 2023 to [May 14], 2024	105.0%
[May 15], 2024 to [May 14], 2025	102.5%
[May 15], 2025 and thereafter	100.0%

(d) Any optional redemption pursuant to this Section 3.08 shall be made in compliance with the provisions of Section 3.01 through Section 3.06 hereof.

ARTICLE 4 Covenants

SECTION 4.01 Payment of Securities. The Company shall pay the principal of, and premium, if any, and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal of, and premium, if any, and interest on any Securities shall be considered paid on the date due if on such date the Trustee or the Paying Agent (if other than the Company, the REIT or a Subsidiary thereof) holds in accordance with this Indenture money in immediately available funds sufficient to pay all principal of, and premium, if any, and interest on the Securities.

The Company shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

SECTION 4.02 Limitation on Indebtedness. (a) The Company shall not, and shall not permit any of its Subsidiaries to, Incur, directly or indirectly, any Indebtedness.

(b) Notwithstanding Section 4.02(a), the Company and its Subsidiaries shall be entitled to Incur or cause or permit the Incurrence of any or all of the following Indebtedness:

(1) (a)(i) the Securities issued on the Issue Date and (ii) the Other Secured Notes issued under the Other Secured Notes Indenture on the Issue Date and (b) Guarantees of Indebtedness Incurred under the Securities and the Other Secured Notes Indenture;

provided that the principal amounts of Indebtedness permitted to be Incurred under this clause (1) shall be reduced by the principal amount of any Securities and Other Secured Notes that are repurchased or redeemed or exchanged for Capital Stock of the REIT pursuant to the terms of this Indenture and the Other Secured Notes Indenture;

(2) Indebtedness outstanding on the Issue Date that has been Incurred by a Subsidiary that owns (directly or indirectly) any Property set forth in Category 4 on Annex I hereto;

(3) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary that directly owns solely any Property set forth in Category 3 on Annex I hereto and (y) secured by assets of such Subsidiary, solely to the extent of a Permitted Lien on such Excluded Property and on the Capital Stock of such Subsidiary, if required pursuant to the terms of such Indebtedness, incurred pursuant to clause (2) of the definition of Permitted Liens; provided that any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(4) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary that directly owns solely any Property set forth in Category 1 on Annex I hereto and (y) secured by assets of such Subsidiary, solely to the extent of a Permitted Lien on such Excluded Property and on the Capital Stock of such Subsidiary, if required pursuant to the terms of such Indebtedness, incurred pursuant to clause (2) of the definition of Permitted Liens; provided that (i) any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04, (ii) the aggregate amount of such Non-Recourse Mortgage Indebtedness Incurred after the Issue Date (including any Refinancing Indebtedness Incurred in respect thereto) shall not exceed \$100,000,000 at any time outstanding and (iii) the loan-to-value ratio of any such Non-Recourse Mortgage Indebtedness Incurred (including any Refinancing Indebtedness Incurred in respect thereto) on any individual Property as determined by an independent mortgage appraisal conducted on behalf of and for the benefit of the lender(s) of such Non-Recourse Mortgage Indebtedness shall be at least 50%;

(5) [reserved];

(6) [reserved];

(7) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary that directly owns solely any Property set forth in Category 8 on Annex I hereto or that directly owns solely the Capital Stock in such Subsidiary that ceases to be Collateral Property (and becomes Excluded Released Property pursuant to clause (1) of the definition of Excluded Released Property) and (y) secured by assets of such Subsidiary that directly owns solely any Property set forth in Category 8 on Annex I hereto and on the Capital Stock in such Subsidiary, solely to the extent of a Permitted Lien on such Excluded Released Property incurred pursuant to clause (1) of the definition of Excluded Released Property;

(8) with respect to an Excluded Non-Guarantor Subsidiary owning Capital Stock in a Joint Venture that owns solely any Property set forth in Category 4 or Category 7 on Annex I hereto, Indebtedness (including in connection with any refinancing of the underlying Indebtedness) (x) constituting a Guarantee by such Subsidiary of Indebtedness Incurred by such Joint Venture to the extent the Capital Stock of such Joint Venture is Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock; and (y) secured by the Capital Stock held by such Subsidiary in such Joint Venture solely to the extent of a Permitted Lien on such Excluded Property incurred pursuant to clause (2) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(9) Refinancing Indebtedness that is Non-Recourse Mortgage Indebtedness (x) incurred by a Subsidiary that owns solely any Property set forth in Category 4 on Annex I hereto and is an Excluded Initial Property and (y) secured solely by a Permitted Lien on such Excluded Initial Property incurred pursuant to clause (3) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(10) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary at the time such Subsidiary acquires solely any Excluded After-Acquired Property and (y) secured solely by a Permitted Lien on such Excluded After-Acquired Property incurred pursuant to clause (4) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(11) Subordinated Obligations of the Company or any of its Subsidiaries if, on the date of such Incurrence and after giving effect thereto on a pro forma basis, the Debt Service Ratio exceeds 1.375 to 1 for the most recently ended four fiscal quarters;

(12) Indebtedness of the Company or of any of its Subsidiaries in an aggregate principal amount which, when taken together with all other Indebtedness of the Company and its Subsidiaries outstanding under this clause (12) on the date of such Incurrence, does not exceed \$75 million at any one time outstanding;

(13) [Reserved];

(14) Recourse Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) in an aggregate principal amount not to exceed \$300.0 million at any one time outstanding;

(15) (A) Acquired Debt provided that on the date of such Incurrence after giving effect to such acquisition on a pro forma basis, either (i) the Debt Service Ratio exceeds 1.375 to 1 for the most recently ended four fiscal quarters or (ii) the Debt Service Ratio is no worse than such ratio immediately prior to such acquisition and (B) Refinancing Indebtedness Incurred in respect thereto;

(16) Hedging Obligations not entered into for speculative purposes;

(17) Indebtedness Incurred in connection with any Sale and Leaseback Transaction;

(18) unsecured Indebtedness of the Company to any Subsidiary or Indebtedness of any Subsidiary to the Company or another Subsidiary; provided that if the Company or a Subsidiary Guarantor Incurs Indebtedness to a Subsidiary that is not a Subsidiary Guarantor (except in respect of intercompany current liabilities Incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of the Company and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Obligations of the Company or such Subsidiary Guarantor in respect of the Securities;

(19) Indebtedness constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(20) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred in connection with the Plan of Reorganization or any other acquisition or disposition of any business, assets or a Subsidiary in accordance with the terms of this Indenture, other than, for the avoidance of doubt, guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(21) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(22) obligations (including reimbursement obligations with respect to letters of credit and bank guarantees) in respect of performance, bid, appeal and surety bonds and completion guarantees and similar obligations provided by the Company or any of its Subsidiaries in the ordinary course of business or consistent with past practice or industry practice; and

(23) Indebtedness in respect of any ordinary course cash management activities of the Company and its Subsidiaries.

(c) Notwithstanding Section 4.02(b), neither the Company nor any Subsidiary shall Incur any Indebtedness pursuant to Section 4.02(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Company or any Subsidiary unless such Indebtedness shall (i) not be secured by a Lien on any property or asset and (ii) be

subordinated in right of payment to the Securities or the applicable Note Guarantee to at least the same extent as such Subordinated Obligations.

(d) For purposes of determining compliance with this Section 4.02, a Guarantee by the Company or a Subsidiary of Indebtedness Incurred by the Company or a Subsidiary, as applicable, shall not be a separate Incurrence of Indebtedness for purposes of calculating any amount of Indebtedness. For purposes of determining compliance with this Section 4.02, accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of deferred financing costs or original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or Preferred Stock, in the form of additional shares of Disqualified Stock or Preferred Stock, and the accretion or amortization of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, shall, in each case, not be deemed to be an Incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock.

SECTION 4.03 Limitation on Asset Sales.

The Company will not, and will not permit any of its Subsidiaries to, consummate an Asset Sale (including a Collateral Disposition), unless:

(1) the Company (or the Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Capital Stock issued or sold or otherwise disposed of; provided, that in the case of a Collateral Disposition of any Property set forth in Category 1 on Annex I hereto (or Capital Stock of a Subsidiary that, directly or indirectly, owns any such Property), the Company (or the Subsidiary) receives consideration at the time of the Asset Sale that is at least equal to the greater of (i) the release price of such Property set forth on Annex II hereto and (ii) the Fair Market Value of the Collateral sold or otherwise disposed of;

(2) at least 75% of the consideration received in the Asset Sale (other than an Asset Sale of Properties set forth in Category 4 on Annex I hereto that are owned by a Subsidiary of the Company and Category 8 on Annex I hereto) by the Company or such Subsidiary is in the form of cash or cash equivalents;

(3) funds in an amount equal to the Net Available Cash are deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien); and

(4) in the case of an Asset Sale of Capital Stock of a Subsidiary, such Asset Sale constitutes a disposition of all Capital Stock of such Subsidiary owned by the Company or any Subsidiary;

provided, that any Collateral Disposition constituting any Event of Loss, loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title to or use of Collateral shall not be required to satisfy the conditions set forth in clauses (1) or (2) of this paragraph.

For the purposes of this Section 4.03, the following are deemed to be cash or cash equivalents:

(1) solely in the case of an Asset Sale not constituting a Collateral Disposition of Property Collateral, the assumption or discharge of Indebtedness of the Company or of a Guarantor (other than unsecured Indebtedness, Junior Lien Debt, contingent liabilities and liabilities that are by their terms subordinated in right of payment to the Notes or any Subsidiary Guarantee and obligations in respect of Disqualified Stock of the Company) or any Indebtedness of any Subsidiary that is not a Guarantor (other than obligations in respect of Disqualified Stock of such Subsidiary) and the release of the Company, such Guarantor or such Subsidiary from all liability on such Indebtedness in connection with such Asset Sale;

(2) in the case of an Asset Sale of a Property set forth in Category 3, Category 4 or Category 7 on Annex I hereto by the Subsidiary or Joint Venture owning such Property, the principal amount of any Indebtedness of such Subsidiary or Joint Venture repaid with the proceeds of such Asset Sale solely to the extent such Indebtedness has been incurred pursuant to Section 4.02(b)(3), (8), or (9) and has been secured by a Permitted Lien on such Property and on the Capital Stock in such Subsidiary incurred pursuant to clause (2) of the definition of Permitted Liens; and

(3) any securities, notes or other obligations received by the Company or any Subsidiary from the transferee that are promptly converted by the Company or such Subsidiary into cash within 180 days of the closing of such Asset Sale, to the extent of cash received in that conversion.

The Company will not permit any Subsidiary to issue any Capital Stock of such Subsidiary to, or otherwise permit any such Capital Stock to be owned by, any Person other than the Company or any Subsidiary Guarantor, except upon a Collateral Disposition of all such Capital Stock to such a Person that complies with this Section 4.03.

Pending the final application of any Net Available Cash from an Asset Sale (including a Collateral Disposition but excluding any Asset Sale of a Property, or of the Capital Stock of a Subsidiary solely owning a Property, set forth in Category 8 on Annex I hereto) or a Joint Venture Disposition, upon the receipt by the Company or a Subsidiary of the Net Available Cash attributable to an Asset Sale or a Joint Venture Disposition, the Company shall cause, or shall cause such Subsidiary to cause, such amounts (such amounts, the "*Pending Use Cash*") to be deposited directly by the Company or such Subsidiary in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and the Pending Use Cash will constitute Collateral pending application as a Permitted Excess Cash Use or as hereinafter described.

Within 360 days (or 720 days with respect to an Event of Loss) after the actual receipt of any Net Available Cash by the Company or a Subsidiary from an Asset Sale (including an Event of Loss and a Collateral Disposition but excluding any Asset Sale of a Property, or of the Capital Stock of a Subsidiary solely owning a Property, set forth in Category 8 on Annex I hereto) or a

Joint Venture Disposition, the Company (or the applicable Subsidiary, as the case may be) may apply such Net Available Cash (each such application a “*Permitted Excess Cash Use*”):

(A) to acquire all or substantially all of the assets of, or any Capital Stock of, another Related Business, if, after giving effect to any such acquisition of Capital Stock, the Related Business is or becomes a Subsidiary of the Company (such assets or Capital Stock, “*Related Business Assets*”);

(B) to make a capital expenditure to construct or improve assets used or useful in a Related Business (such assets, “*CapEx Assets*”);

(C) to acquire other Additional Assets (such Related Business Assets, CapEx Assets, Additional Assets or Specified Property referenced in clauses (A), (B), (C) and (E), collectively, the “*Permitted Excess Cash Use Assets*”);

(D) to fund distributions to qualify, or maintain the qualification of the REIT or any other parent of the Company, as a real estate investment trust for U.S. federal income tax purposes as such Permitted Excess Cash Use in this clause (D) is approved in good faith by the Boards of Directors of both the Company and the REIT; provided that (x) the amount required to fund distributions shall take into account the extent to which the REIT may issue stock dividends that qualify for deduction under Code Section 561(a); (y) the aggregate cash amount under this clause (D) does not exceed \$10 million in any calendar year; and (z) no Event of Default shall have occurred and be continuing or would occur as a consequence thereof; or

(E) to repay at a discount any Non-Recourse Mortgage Indebtedness or Recourse Indebtedness of any Excluded Non-Guarantor Subsidiary owning any Property that immediately prior to such repayment does not constitute Collateral (such Property, “*Specified Property*”) to the extent such Permitted Excess Cash Use in this clause (E) is approved in good faith by the Boards of Directors of both the Company and the REIT; provided that (x) as a result of such repayment, such Non-Recourse Mortgage Indebtedness or Recourse Indebtedness is satisfied and discharged in its entirety and, simultaneously with such repayment, all Liens on such Specified Property and any other property or assets of the Company or any Subsidiary securing such Indebtedness are released, (y) such Specified Property shall be deemed listed under Category 1 on Annex I hereto and the Company shall promptly deliver to the Collateral Agent the documents and certificates required by Section 4.14 and Article 12 of this Indenture and (z) no Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

provided that (y) in the case of a Collateral Disposition of any Property set forth in Category 1 on Annex I hereto, the amount of Net Available Cash from such Collateral Dispositions after the Issue Date that is applied to any one or more Permitted Excess Cash Use Assets that are not deemed listed under “Category 1” on Annex I hereto pursuant to Section 4.14 shall not exceed \$75.0 million in the aggregate, and (z) in the case of clauses (A), (B), (C) or (E), prior to or simultaneously with or within ten (10) Business Days after the acquisition or capital expenditure

to construct or improve (or in the case of clause (E), the repayment of Indebtedness previously secured by) such Permitted Excess Cash Use Assets (or 45 days in the case of a mortgage), (i) (x) the Subsidiary owning such Permitted Excess Cash Use Assets (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (y) the Collateral Agent has been granted a valid, enforceable perfected first-priority security interest (subject only to Permitted Collateral Liens) in such Permitted Excess Cash Use Assets in accordance with Section 4.14 and (ii) in the manner specified in Section 12.02(c) and Section 12.04(e) of this Indenture, the Company or such Subsidiary Guarantor shall have executed and delivered to the Collateral Agent such Security Documents referred to therein or as shall otherwise be reasonably necessary to vest in the Collateral Agent a valid, enforceable perfected security interest or other Liens in or on such Permitted Excess Cash Use Assets and to have such Permitted Excess Cash Use Assets added to the Collateral, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions, if any) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents and an Officer's Certificate and Opinion of Counsel as to the satisfaction of the foregoing requirements (such Opinions of Counsel and Officer's Certificate also to be delivered to the Trustee); and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such Permitted Excess Cash Use Assets to the same extent and with the same force and effect.

Any Net Available Cash from any Asset Sale (including any Collateral Disposition but excluding any Asset Sale of a Property, or of the Capital Stock of a Subsidiary solely owning a Property, set forth in Category 8 on Annex I hereto) or a Joint Venture Disposition that is not applied as provided in, and within the applicable 360 day or 720 day time period set forth in, the preceding paragraph of this Section 4.03 will constitute "*Asset Sale Excess Proceeds*." When the aggregate amount of Asset Sale Excess Proceeds exceeds \$50.0 million (any aggregate amount of Asset Sale Excess Proceeds first exceeding such threshold amount being referred to as an "*Asset Sale Trigger Event*"), within ten Business Days thereof, the Company will (x) make an Asset Sale Excess Proceeds Offer to all Holders of Securities to purchase the maximum principal amount of Securities that may be purchased at the Asset Sale Excess Proceeds Offer Price in an amount equal to the portion of such Asset Sale Excess Proceeds equal to the sum of (i) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (ii) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer and (y) substantially concurrently therewith effect an Asset Sale Excess Proceeds Other Offer with respect to the Other Secured Notes in accordance with the Other Secured Notes Indenture. "*Asset Sale Excess Proceeds Offer Price*" means, as to any Securities to be purchased in any Asset Sale Excess Proceeds Offer, (i) an amount equal to 102% for Assets Sales of Collateral (other than any Event of Loss), (ii) an amount equal to 100% for Asset Sales of non-Collateral and (iii) an amount equal to 100% for Asset Sales constituting Events of Loss, in the case of each of clauses (i), (ii) and (iii), of the principal amount of the Securities plus accrued and unpaid interest, if any, to the Asset Sale Excess Proceeds Offer Purchase Date (subject to the right of Holders of record on the relevant record date to receive interest due on an Interest Payment Date that is on or prior to the Asset Sale Excess Proceeds Offer Purchase Date). Such Asset Sale Excess Proceeds Offer will be payable in cash. For the avoidance of doubt, the Asset Sale Excess Proceeds Offer Price set forth in this paragraph shall override the optional redemption price set forth in Section 3.08 of this Indenture. The Company may, at its option, satisfy

the foregoing obligations with respect to an Asset Sale Excess Proceeds Offer prior to the expiration of the applicable 360 day or 720 day period or prior to receiving more than \$50.0 million of Asset Sales Excess Proceeds.

On the Asset Sale Excess Proceeds Offer Purchase Date, the Company will deposit with the Paying Agent and the paying agent under the Other Secured Notes Indenture, respectively, such amount as will enable (i) the Trustee, to the extent of the Securities tendered in such Asset Sale Excess Proceeds Offer, to apply the portion of such Asset Sale Excess Proceeds equal to the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (y) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer to the repurchase, at the applicable Asset Sale Excess Proceeds Offer Price, of Securities validly tendered and accepted for purchase in the Asset Sale Excess Proceeds Offer and (ii) the Other Secured Notes Trustee, to the extent of Other Secured Notes validly tendered and accepted for purchase in the Asset Sale Excess Proceeds Other Offer, apply the portion of such Asset Sale Excess Proceeds equal to the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Other Offer applicable to the Other Secured Notes plus (y) the Asset Sale Excess Proceeds Securities Unused Amount. For the avoidance of doubt, the Company's making of any Asset Sale Excess Proceeds Offer shall not constitute a redemption of Securities pursuant to Article 3 or paragraph 5 of the Securities.

If any Asset Sale Excess Proceeds remain after consummation of an Asset Sale Excess Proceeds Offer and the related Asset Sale Excess Proceeds Other Secured Notes Offer, the Company may use those Asset Sale Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate Asset Sale Excess Proceeds Offer Price payable with respect to the aggregate principal amount of Securities tendered into such Asset Sale Excess Proceeds Offer exceeds the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (y) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer, the Trustee will select the Securities to be purchased on a *pro rata* basis on the basis of the aggregate principal amount of validly tendered Securities. Upon surrender of a Security that is repurchased in part, the Company shall issue in the name of the applicable Holder and the Trustee shall authenticate for such Holder at the expense of the Company a new Security equal in principal amount to the non-repurchased portion of the Security surrendered. Upon completion of each Asset Sale Excess Proceeds Offer, the amount of Asset Sale Excess Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Securities pursuant to an Asset Sale Excess Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.03, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions by virtue of such compliance.

In the event that, pursuant to this Section 4.03 hereof, the Company shall be required to commence an offer (an "*Asset Sale Excess Proceeds Offer*") to all Holders to purchase the maximum principal amount of Securities that may be purchased at the Asset Sale Excess Proceeds

Offer Price with an amount equal to the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (y) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer (the “*Asset Sale Excess Proceeds Offer Amount*”), the Company shall follow the procedures specified below:

(a) The Asset Sale Excess Proceeds Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the “*Asset Sale Excess Proceeds Offer Period*”). No later than five Business Days after the termination of the Asset Sale Excess Proceeds Offer Period (the “*Asset Sale Excess Proceeds Offer Purchase Date*”), the Company shall purchase and pay the Asset Sale Excess Proceeds Offer Price with respect to all Securities validly tendered and accepted for purchase, or if the amount of Securities validly tendered at the Asset Sale Excess Proceeds Offer Price with respect to all Securities validly tendered is greater than the Asset Sale Excess Proceeds Offer Amount, the Company shall purchase and pay for Securities validly tendered at the Asset Sale Excess Proceeds Offer Price in an aggregate amount equal to the Asset Sale Excess Proceeds Amount. Payment for any Securities so purchased shall be made in the manner prescribed in the Securities.

(b) Upon the commencement of an Asset Sale Excess Proceeds Offer, the Company shall send a notice to each of the Holders with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Asset Sale Excess Proceeds Offer. The Asset Sale Excess Proceeds Offer shall be made to all Holders. The notice, which shall govern the terms of the Asset Sale Excess Proceeds Offer, shall state:

(1) that the Asset Sale Excess Proceeds Offer is being made pursuant to this Section 4.03 hereof, and the length of time the Asset Sale Excess Proceeds Offer shall remain open, including the time and date the Asset Sale Excess Proceeds Offer will terminate (the “*Asset Sale Excess Proceeds Termination Date*”);

(2) the Asset Sale Excess Proceeds Offer Price;

(3) that the aggregate amount to be applied to purchase the Securities in the Asset Sale Excess Proceeds Offer will consist of an amount equal to the Pro Rata Percentage Amount applicable to the Securities (and specifying such amount) plus, depending on the extent to which Other Secured Notes are not tendered in the Asset Sale Excess Proceeds Offer being conducted substantially concurrently with such Asset Sale Excess Proceeds Offer, an additional amount not to exceed the Pro Rata Percentage Amount applicable to the Other Secured Notes (and specifying such other amount);

(4) that any Security not tendered or accepted for payment shall continue to accrue interest;

(5) that, unless the Company defaults in making such payment, any Security accepted for payment pursuant to the Asset Sale Excess Proceeds Offer shall cease to accrue interest after the Asset Sale Excess Proceeds Offer Purchase Date;

(6) that Holders electing to have a Security purchased pursuant to any Asset Sale Excess Proceeds Offer shall be required to surrender the Security, properly endorsed for transfer, together with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Security completed and such customary documents as the Company may reasonably request, to the Company or a Paying Agent at the address specified in the notice, before the Asset Sale Excess Proceeds Termination Date;

(7) that Holders shall be entitled to withdraw their election if the Company or the Paying Agent, as the case may be, receives, prior to the Asset Sale Excess Proceeds Termination Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased;

(8) that, if the aggregate principal amount of Securities surrendered by Holders at the Asset Sale Excess Proceeds Offer Price exceeds the Asset Sale Excess Proceeds Offer Amount, the Trustee shall select the Securities to be purchased on a pro rata basis on the basis of the aggregate principal amount of validly tendered Securities (with such adjustments as may be deemed appropriate by the Trustee so that only Securities in denominations of \$1.00, or integral multiples of \$1.00 in excess of \$1.00, shall be purchased); and

(9) that Holders whose Securities were purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered, which unpurchased portion must be equal to \$1.00 in principal amount or an integral multiple of \$1.00 in excess of \$1.00.

If any of the Securities subject to an Asset Sale Excess Proceeds Offer is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depository applicable to repurchases.

Promptly after the Asset Sale Excess Proceeds Termination Date, the Company shall, to the extent lawful, accept for payment Securities or portions thereof tendered pursuant to the Asset Sale Excess Proceeds Offer in the aggregate principal amount required by this Section 4.03 hereof, and prior to the Asset Sale Excess Proceeds Offer Purchase Date the Company shall deliver to the Trustee an Officer's Certificate stating that such Securities or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 4.03. Prior to 11:00 a.m., New York City time, on the Asset Sale Excess Proceeds Offer Purchase Date, the Company or the Paying Agent, as the case may be, shall mail or deliver to each tendering Holder an amount equal to the Asset Sale Excess Proceeds Offer Price with respect to the aggregate principal amount of the Securities validly tendered by such Holder and accepted by the Company for purchase, and the Company shall issue a new Security, and the Trustee shall authenticate and mail or deliver such new Security to such Holder, in a principal amount equal to any unpurchased portion of the Security surrendered. Any Security not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company shall publicly announce the results of the Asset Sale Excess Proceeds Offer on or before the Asset Sale Excess Proceeds Offer Purchase Date.

SECTION 4.04 Redemption Upon Release Trigger Event. No later than the fifth (5th) Business Day after the occurrence of a Release Trigger Event, the Company shall deliver an Officer's Certificate to the Trustee specifying (i) such Release Trigger Event and the Collateral Release Excess Proceeds in respect thereof; (ii) any Property or Capital Stock that has become Excluded Released Property as a result of such Release Trigger Event; and (iii) any Subsidiary that has become an Excluded Non-Guarantor Subsidiary as a result of such Release Trigger Event. The Company will, within 25 Business Days after the receipt of Net Available Cash (other than (1) proceeds from (x) Recourse Indebtedness permitted to be incurred pursuant to Section 4.02(b)(14) or (y) Non-Recourse Mortgage Indebtedness permitted to be incurred pursuant to Section 4.02, in either case used solely for the construction or development of any Property that has been approved by the Boards of Directors of both the Company and the REIT and used for the purpose of financing a property development project, which shall not be subject to this Section 4.04 and (2) any Excluded Release Trigger Event Proceeds (as defined below) with respect to such Release Trigger Event) from any Release Trigger Event (such Net Available Cash, excluding any such proceeds specified in clause (1)(x) or (y) above and any Excluded Release Trigger Event Proceeds, the "*Collateral Release Excess Proceeds*") in an aggregate amount that exceeds \$25.0 million, (i) redeem (a "*Collateral Release Excess Proceeds Redemption*") all or such portion of Securities at the redemption price set forth in Section 3.07 in effect on the redemption date including accrued and unpaid interest, if any, to the redemption date (the "*Collateral Release Excess Proceeds Redemption Price*") (subject to the right of Holders of record on the relevant record date to receive interest due on an Interest Payment Date that is on or prior to the redemption date) (such redemption date, the "*Collateral Release Excess Proceeds Redemption Date*"); provided that the Collateral Release Excess Proceeds Redemption Date shall be at least five (5) Business Days after the expiration date of the Collateral Release Excess Proceeds Offer with respect to such Release Trigger Event required to be made by the Company to the Other Secured Noteholders pursuant to the Other Secured Notes Indenture; and (ii) substantially concurrently therewith, effect a Collateral Release Excess Proceeds Offer with respect to the Other Secured Notes in accordance with the Other Secured Notes Indenture in an amount equal to the Pro Rata Percentage Amount applicable to the Other Secured Notes with respect to such Release Trigger Event. The principal amount of Securities to be redeemed on the Collateral Release Excess Proceeds Redemption Date shall be the maximum principal amount of Securities for which the aggregate Collateral Release Excess Proceeds Redemption Price does not exceed the sum of (i) the Pro Rata Percentage Amount applicable to the Securities with respect to such Release Trigger Event plus (ii) the Collateral Release Excess Proceeds Other Secured Notes Unused Amount. For the avoidance of doubt, upon completion of each Collateral Release Excess Proceeds Redemption and the substantially concurrent Collateral Release Excess Proceeds Offer, there will remain no unapplied amount of such Collateral Release Excess Proceeds. The Company may, at its option, satisfy the foregoing obligations with respect to a Collateral Release Excess Proceeds Redemption and concurrent Collateral Release Excess Proceeds Offer prior to having more than \$25.0 million of Collateral Release Excess Proceeds.

For purposes of this Section 4.04, "*Excluded Release Trigger Event Proceeds*" means, with respect to any Release Trigger Event, such portion of the Net Available Cash of any Release Trigger Event (not to exceed 30% of such Net Available Cash) as the Company shall, at its option, with the approval of the Boards of Directors of both the Company and the REIT, use to repay at a discount Non-Recourse Mortgage Indebtedness or Recourse Indebtedness of any Excluded Non-

Guarantor Subsidiary owning any Property that immediately prior to such repayment does not constitute Collateral (such Property, “*Trigger Release Replacement Property*”); provided that (i) as a result of such repayment, such Non-Recourse Mortgage Indebtedness or Recourse Indebtedness is satisfied and discharged in its entirety and, simultaneously with such repayment, all Liens on such Trigger Release Replacement Property and any other property or assets of the Company or any Subsidiary securing such Indebtedness are released; (ii) no Event of Default shall have occurred and be continuing or would occur as a consequence thereof; (iii) such Trigger Release Replacement Property shall be deemed listed under Category 1 on Annex I hereto and the Company shall promptly deliver to the Collateral Agent the documents and certificates required by Section 4.14 and Article 12 of this Indenture; and (iv) prior to or simultaneously with or within ten (10) Business Days after the repayment of the Indebtedness previously secured by such Trigger Release Replacement Property (or 45 days in the case of a mortgage), (i) (x) the Subsidiary owning such Trigger Release Replacement Property (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (y) the Collateral Agent has been granted a valid, enforceable perfected first-priority security interest (subject only to Permitted Collateral Liens) in such Trigger Release Replacement Property in accordance with Section 4.14 and (ii) in the manner specified in Section 12.02(c) and Section 12.04(e) of this Indenture, the Company or such Subsidiary Guarantor shall have executed and delivered to the Collateral Agent such Security Documents referred to therein or as shall otherwise be reasonably necessary to vest in the Collateral Agent a valid, enforceable perfected security interest or other Liens in or on such Trigger Release Replacement Property and to have such Trigger Release Replacement Property added to the Collateral, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions, if any) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents and an Officer’s Certificate and Opinion of Counsel as to the satisfaction of the foregoing requirements (such Opinions of Counsel and Officer’s Certificate also to be delivered to the Trustee); and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such Trigger Release Replacement Property in the same extent and with the same force and effect. For the avoidance of doubt, Excluded Release Trigger Event Proceeds shall not be Collateral Release Excess Proceeds subject to this Section 4.04.

Pending the final application of any Net Available Cash from any Collateral Release Excess Proceeds Redemption, upon the actual receipt by the Company or a Subsidiary of the Net Available Cash attributable to Collateral Release Excess Proceeds, (i) the Company will notify the Collateral Agent of such receipt and (ii) the Company shall cause, or cause such Subsidiary to cause, such amounts (such amounts, the “*Pending Redemption Cash*”) to be deposited directly by the Company or such Subsidiary in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and the Pending Redemption Cash will constitute Collateral pending application in the Collateral Release Excess Proceeds Redemption or Collateral Release Excess Proceeds Offer.

On the Collateral Release Excess Proceeds Redemption Date, the Company will deposit with the Trustee such respective portions of the Collateral Release Excess Proceeds as will enable the Trustee, to the extent of the Securities to be redeemed in such Collateral Release Excess Proceeds Redemption, to apply the portion of such Collateral Release Excess Proceeds equal to

the product of (x) the amount of the Securities to be redeemed in the Collateral Release Excess Proceeds Redemption and (ii) the Collateral Release Excess Proceeds Redemption Price plus accrued and unpaid interest to but excluding the Collateral Release Excess Proceeds Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date).

Any Collateral Release Excess Proceeds Redemption shall be made pursuant to the provisions of Article 3.

SECTION 4.05 Limitation on Affiliate Transactions. (a) The Company shall not, and shall not permit any of its Subsidiaries to, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with, or for the benefit of, any Affiliate of the Company in an amount greater than \$1.0 million in any transaction or series of related transactions (an "*Affiliate Transaction*") unless:

(1) the terms of the Affiliate Transaction are not materially less favorable to the Company or such Subsidiary than those that could reasonably be expected to be obtained at the time of the Affiliate Transaction in arm's-length dealings with a Person who is not an Affiliate;

(2) if such Affiliate Transaction involves an amount in excess of \$5.0 million, the terms of the Affiliate Transaction are set forth in writing and a majority of the directors of the Company disinterested with respect to such Affiliate Transaction have determined in good faith that the criteria set forth in clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a Board Resolution; and

(b) The provisions of Section 4.05(a) shall not prohibit:

(1) any employment agreement or other employee compensation plan or arrangement in existence on the Issue Date or entered into thereafter in the ordinary course of business including any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the Board of Directors;

(2) loans or advances to employees (or cancellations thereof) in the ordinary course of business in accordance with the past practices of the Company or its Subsidiaries, but in any event not to exceed \$1.0 million in the aggregate outstanding at any one time;

(3) advances to or reimbursements of employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures, in each case in the ordinary course of business of the Company or any of its Subsidiaries;

(4) the payment of reasonable compensation and fees to directors of the Company and its Subsidiaries who are not employees of the Company or its Subsidiaries;

(5) any transaction between the REIT, the Company, the Operating Partnership and/or their respective Subsidiaries;

(6) indemnities of officers, directors and employees of the Company or any Subsidiary consistent with applicable charter, by-law or statutory provisions;

(7) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company or the receipt by the Company of a cash capital contribution from its stockholders;

(8) transactions with Joint Ventures, customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, provided that in the reasonable determination of the Board of Directors or the senior management of the Company, such transactions are on terms not materially less favorable to the Company or the relevant Subsidiary than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company;

(9) transactions between the Company or any Subsidiary and any Person, a director of which is also a director of the Company or any director or indirect parent company of the Company, and such director is the sole cause for such Person to be deemed an Affiliate of the Company or any Subsidiary; provided, however, that such director shall abstain from voting as a director of the Company or such direct or indirect parent company, as the case may be, on any matter involving such other Person;

(10) any transaction with Affiliates pursuant to arrangements in existence on the Issue Date pursuant to which those Affiliates own, or are entitled to acquire, working, overriding royalty or other similar interests in particular properties operated by the Company or any Subsidiary or in which any of the Company or one or more Subsidiaries also own an interest;

(11) mergers, consolidations or sales of all or substantially all assets permitted by, and complying with, the provisions of Section 5.01, 5.02 and 5.03;

(12) the execution of the restructuring transactions pursuant to the Plan of Reorganization and the payment of all fees and expenses related thereto or required by the Plan of Reorganization; and

(13) transactions undertaken in good faith by the Company for the purpose of improving the consolidated tax efficiency of the Company and its Subsidiaries and not for the purpose, or with the effect, of circumventing any provision set forth in this Indenture.

SECTION 4.06 Liens and Negative Pledge. The Company shall not, and shall not permit any of its Subsidiaries, directly or indirectly, to:

(a) Incur or suffer to exist any Lien (other than Permitted Collateral Liens) on any Collateral or any Liens (other than Permitted Liens) on any other Properties, or any direct or indirect ownership interest of the Company or any Subsidiary in any Person owning any Collateral or any Property, whether owned at the Issue Date or thereafter acquired, other than Permitted

Collateral Liens (in the case of Collateral) or Permitted Liens (in the case of any other Property); or

(b) permit any Collateral or any other properties or assets held by the Company or any Subsidiary, as applicable, to be subject to a Negative Pledge (other than pursuant to the Secured Debt Documents), other than (i) any properties or assets held by any Excluded Non-Guarantor Subsidiary or (ii) any Excluded Property.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “Increased Amount” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (7) of the definition of Indebtedness.

SECTION 4.07 Future Guarantors. The Company and each Subsidiary shall cause each Subsidiary that is not already a Subsidiary Guarantor (other than any Excluded Non-Guarantor Subsidiary) to, within 30 calendar days of the date on which such Person became such a Subsidiary, (i) execute and deliver to the Trustee and the Collateral Agent, if applicable, a Guaranty Supplemental Indenture pursuant to which such Subsidiary shall Guarantee payment of the Securities on the same terms and conditions as those set forth in this Indenture and a joinder to the Collateral Agency and Intercreditor Agreement and (ii) deliver to the Trustee an Opinion of Counsel satisfactory to the Trustee as to the authorization, execution and delivery by such Subsidiary of such Guaranty Supplemental Indenture and such joinder and the validity and enforceability against such Subsidiary of this Indenture (including the Note Guarantee of such Subsidiary) and the Collateral Agency and Intercreditor Agreement. The Company and each Subsidiary shall cause each Subsidiary that guarantees any Other Secured Notes Obligations to, at the same time, (i) execute and deliver to the Trustee and the Collateral Agent, if applicable, a Guaranty Supplemental Indenture pursuant to which such Subsidiary shall Guarantee payment of the Securities on the same terms and conditions as those set forth in this Indenture and a joinder to the Collateral Agency and Intercreditor Agreement and (ii) deliver to the Trustee an Opinion of Counsel satisfactory to the Trustee as to the authorization, execution and delivery by such Subsidiary of such Guaranty Supplemental Indenture and such joinder and the validity and enforceability against such Subsidiary of this Indenture (including the Note Guarantee of such Subsidiary) and the Collateral Agency and Intercreditor Agreement.

SECTION 4.08 Compliance Certificate. The Company shall deliver to the Trustee within the later of (a) 120 days after the end of each fiscal year of the Company or (b) five (5) days after the filing with the SEC of the applicable Form 10-K (or any successor or comparable form) pursuant to Section 4.12 by the Reporting Entity, an Officer’s Certificate of the Company stating that in the course of the performance by the signer of his or her duties as an Officer of the Company they would normally have knowledge of any Default and whether the signer knows of any Default that occurred during such fiscal year. If the signer is aware of a Default, the certificate shall describe the Default, its status and what action the Company is taking or proposes to take with

respect thereto. The Company shall comply with TIA § 314(a)(4) and deliver the certificate referred to in such section of the TIA, which certificate shall be delivered to the Trustee within the later of (a) 120 days after the end of each fiscal year of the Company or (b) five (5) days after the filing with the SEC of the applicable Form 10-K (or any successor or comparable form) pursuant to Section 4.12 by the Reporting Entity. For purposes of this Section 4.08, the “fiscal year” of the Company means a calendar year ending December 31.

SECTION 4.09 Further Instruments and Acts.

(a) Upon reasonable request of the Trustee, the Company will, and will cause each of its Subsidiaries to, execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

(b) Promptly upon reasonable request by the Collateral Agent, the Company shall, and the Company shall cause each of its Subsidiaries to, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, any and all such further acts, deeds, conveyances, security agreements, mortgages, deeds of covenants, collateral agency agreements, deeds of trust, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments the Collateral Agent may require from time to time in order to (i) carry out more effectively the purposes of any Security Document, (ii) subject to the Liens created by any of the Security Documents any of the properties, rights or interests intended to be covered by any of the Security Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and the Liens intended to be created thereby, and (iv) better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Collateral Agent the rights granted or now or hereafter intended to be granted to the Collateral Agent under the Security Documents.

(c) Upon reasonable request of the Collateral Agent at any time after an Event of Default has occurred and is continuing, the Company shall, and shall cause each of its Subsidiaries to, (i) permit the Collateral Agent or any advisor, auditor, consultant, attorney or representative acting for the Collateral Agent, upon reasonable notice to the Company or such Subsidiary, as applicable, and during normal business hours, to visit and inspect any Collateral to the Company or such Guarantor, as applicable, to review, make extracts from and copy the books and records of to the Company or such Subsidiary, as applicable, relating to any such property, and to discuss any matter pertaining to any such property with the officers and employees of the Company or such Subsidiary, as applicable, and (ii) deliver to the Collateral Agent such reports, including valuations to the extent previously available, relating to any such property or any Lien thereon as the Collateral Agent may request. The Company will promptly reimburse the Trustee and Collateral Agent for all costs and expenses incurred by the Trustee or Collateral Agent in connection therewith, including all reasonable fees and charges of any advisors, auditors, consultants, attorneys or representatives acting for the Trustee or for the Collateral Agent.

SECTION 4.10 Insurance. The Company will, and will cause each of the Company’s Subsidiaries to, maintain, with financially sound and reputable insurance companies, insurance

(including property insurance, liability insurance, business interruption insurance, and workers' compensation insurance) in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Subject to the Security Documents and the Collateral Agency and Intercreditor Agreement, the loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral shall be endorsed in favor of the Collateral Agent as its interests in the Collateral may appear and any such liability policies shall name the Collateral Agent as "additional insureds" (except no endorsements shall be required with respect to worker's compensation policies) and any casualty insurance policies shall name the Collateral Agent as a "loss payee", and also provide that the insurer will endeavour to give at least thirty (30) days prior notice of any cancellation (or at least ten (10) days' notice of any cancellation due to non-payment) to the Collateral Agent, it being understood that the Company shall be afforded a period of sixty (60) days following the Issue Date to comply with this Section 4.10 (or such longer period approved by the Collateral Agent). Upon reasonable request of the Collateral Agent, the Company shall, and shall cause each of its Subsidiaries to, furnish to the Collateral Agent such information relating to its property and liability insurance carriers as may be requested by the Collateral Agent from time to time. Notwithstanding the foregoing, the Company and its Subsidiaries may self-insure with respect to such risks with respect to which companies of established reputation in the same general line of business in the same general area usually self-insure.

SECTION 4.11 Impairment of Security Interest.

Each of the Guarantors will not and the Company will not, and Company will not permit any of its Subsidiaries to, directly or indirectly:

- (1) take or omit to take, any action which action or omission could be reasonably expected to have the result of materially impairing the security interest with respect to the Collateral for the benefit of the Collateral Agent and the holders of the Secured Obligations; or
- (2) grant to any Person other than the Collateral Agent, for the benefit of the Trustee, the Other Secured Notes Trustee and the other holders of the Secured Obligations, any interest whatsoever in any of the Collateral;

in each case, other than in connection with the creation of Permitted Collateral Liens.

SECTION 4.12 Reports and Other Information.

(a) For so long as any Securities are outstanding, the Company shall deliver to the Trustee a copy of all of the information and reports referred to below (within the time periods specified in the SEC's rules and regulations that would apply if the Company were required to file with the SEC as a "non-accelerated filer"; provided that if the Reporting Entity (as defined below) is filing such information and reports with the SEC, within the time periods specified in the SEC rules and regulations for such Reporting Entity):

- (1) annual reports of the Reporting Entity (as defined below) for such fiscal year containing the information that would have been required to be contained in an annual

report on Form 10-K (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC;

(2) quarterly reports of the Reporting Entity for each of the first three fiscal quarters of each fiscal year thereafter containing the information that would have been required to be contained in a quarterly report on Form 10-Q (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC; and

(3) current reports of the Reporting Entity containing substantially all of the information that would be required to be filed in a current report on Form 8-K under the Exchange Act on the Issue Date pursuant to Sections 1, 2 and 4, Items 5.01, 5.02(a), (b) and (c) and Item 9.01(a) and (b) (only to the extent relating to any of the foregoing) of Form 8-K if the Reporting Entity had been a reporting company under the Exchange Act.

In addition to providing such information to the Trustee, the Company shall make available to the Holders, prospective investors, bona fide market makers and securities analysts the information required to be provided pursuant to the foregoing clauses (1), (2) and (3), by posting such information to its website (or the website of any of the Company's parent companies, including the Reporting Entity) or on IntraLinks or any comparable online data system or website.

Notwithstanding the foregoing, (A) neither the Company nor any Reporting Entity that is not subject to Section 13 or 15(d) of the Exchange Act will be required to deliver any information, certificates or reports that would otherwise be required by (i) Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (ii) Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein and (B) such reports will not be required to contain audited or unaudited condensed consolidating financial information in the notes to the audited or unaudited financial statements required by Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X or include any exhibits or certifications required by Form 10-K, Form 10-Q or Form 8-K (or any successor or comparable forms) or related rules under Regulation S-K; provided that for the avoidance of doubt if the Reporting Entity is not the Company, such Reporting Entity will continue to be required to deliver the information described in clause (2) of Section 4.12(b) in either the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section or other such non-financial statement section of such report or as otherwise permitted pursuant to clause (b) below.

(b) The financial statements, information and other documents required to be provided as described in this Section 4.12 may be those of (i) the Company or (ii) any direct or indirect parent of the Company (any such entity described in clause (i) or (ii), a "*Reporting Entity*"), so long as in the case of clause (ii) either (1) such direct or indirect parent of the Company shall not conduct, transact or otherwise engage, or commit to conduct, transact or otherwise engage, in any business or operations other than its direct or indirect ownership of all of its equity interests in, and its management of, the Company or (2) if otherwise, the financial information so delivered shall be accompanied by (which may be included in a separate supplement that is not filed with the SEC so long as such supplement is made publicly available on the Company or the

REIT's website) a reasonably detailed description of the quantitative differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Subsidiaries on a standalone basis, on the other hand, with such reasonably detailed description including: (x) condensed consolidating financial information for the REIT, on an unconsolidated basis, the Operating Partnership, on an unconsolidated basis, the New Bank Claim Borrower and its Subsidiaries on a consolidated basis, the Company and its Subsidiaries on a consolidated basis, intercompany eliminations and consolidation entries and the REIT and its subsidiaries on a consolidated basis, (y) the portfolio level financial information by property category (including by malls, other and total) as contained on slide 31 of Exhibit 99.2 (Presentation to the Ad Hoc Group dated July 2020) to the Current Report on Form 8-K filed by the REIT and the Operating Partnership with the SEC on August 19, 2020 and (z) the occupancy rate and sales per square foot operating statistics by the same property categories used in the preceding clause (y); provided, that in case of clause (x), no such information shall be required to be provided for any periods ending prior to the Issue Date and in the case of clauses (y) and (z), such information shall be provided initially for the years ended January 1, 2019, 2020 and 2021 (in each case, to the extent available) and thereafter for the same interim financial statement periods and annual financial statement periods included in the applicable quarterly or annual report required to be provided pursuant to Section 4.12(a).

(c) The Company will make such information available electronically to prospective investors upon request. The Company shall, for so long as any Securities remain outstanding during any period when it is not or any Reporting Entity is not subject to Section 13 or 15(d) of the Exchange Act, or otherwise permitted to furnish the SEC with certain information pursuant to Rule 12g3-2(b) of the Exchange Act, furnish to the Holders and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(d) Notwithstanding the foregoing, the Company will be deemed to have delivered such reports and information referred to in this Section 4.12 to the Holders, prospective investors, market makers, securities analysts and the Trustee for all purposes of this Indenture if the Company or another Reporting Entity has filed such reports with the SEC via the EDGAR filing system (or any successor system) and such reports are publicly available. In addition, the requirements of this Section 4.12 shall be deemed satisfied and the Company will be deemed to have delivered such reports and information referred to in this Section 4.12 to the Trustee, Holders, prospective investors, market makers and securities analysts for all purposes of this Indenture by the posting of reports and information that would be required to be provided on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity). Notwithstanding the foregoing, the Trustee shall have no obligation to monitor or confirm, on a continuing basis or otherwise, whether the Company posts such reports, information and documents on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity) or the SEC's EDGAR service, or collect any such information from the Company's (or any of the Company's parent companies') website or the SEC's EDGAR service. The Trustee shall have no liability or responsibility for the content, filing or timeliness of any report delivered or filed under or in connection with this Indenture or the transactions contemplated thereunder.

(e) Delivery of such reports, information and documents to the Trustee pursuant to this Section 4.12 is for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's, any Subsidiary Guarantors' or any other Person's compliance with any of its covenants under this Indenture or the Securities (as to which the Trustee is entitled to rely exclusively on the Officer's Certificates). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provision of this Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein.

SECTION 4.13 [Reserved.]

SECTION 4.14 After-Acquired Property. If at any time the Company or any of its Subsidiaries acquires or otherwise owns any asset or property (other than Collateral or Excluded Property) constituting Property or Capital Stock or material other After-Acquired Property (except as otherwise provided under Section 4.03 or any Property acquired solely with proceeds from an issuance of Capital Stock of the REIT contributed by the REIT to the Company or the applicable Guarantor), both:

(x)(i) if the Capital Stock so acquired or otherwise owned is Capital Stock of a Joint Venture, the Subsidiary that acquires such Capital Stock shall be a Subsidiary Guarantor or become a Subsidiary Guarantor to the extent (A) required pursuant to Section 4.07 and (B) such guarantee is permitted by the agreements governing such Joint Venture and any agreement governing Indebtedness of such Joint Venture provided that the Company shall use its commercially reasonable efforts in good faith to cause such guarantee to be permitted, and any Property owned by such Joint Venture shall be deemed listed under "Category 4" on Annex I hereto, (ii) if any Property so acquired or otherwise owned (directly or through the acquisition of Capital Stock) is Excluded After-Acquired Property owned by a Subsidiary of a Subsidiary, then such applicable Property shall be deemed listed under "Category 4" on Annex I hereto and the Subsidiary that owns the Capital Stock of the Subsidiary that directly owns such Property shall be a Subsidiary Guarantor to the extent required or become a Subsidiary Guarantor pursuant to Section 4.07 and (iii) if any Property so acquired or otherwise owned (directly or through the acquisition of Capital Stock) is owned by a Subsidiary and is not subject to a Lien securing Non-Recourse Mortgage Indebtedness at the time of acquisition, (A) such Subsidiary (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (B) such Property shall be deemed listed under "Category 1" on Annex I hereto, and

(y) the Company or such Subsidiary shall cause a valid, enforceable, perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien in or on such After-Acquired Property (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and execute and deliver to the Collateral Agent the following documents and certificates and any other documents and certificates required by this Section 4.14, Article 12 or any other provision of this Indenture:

(1) to the extent such After-Acquired Property constitutes Property deemed listed under “Category 1” on Annex I hereto, (x) a Mortgage with respect to such After-Acquired Property, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office), (y) Security Documents with respect to all personal property of the Company or such Subsidiary, as applicable, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee) and (z) the remaining Real Property Collateral Requirements;

(2) to the extent such After-Acquired Property constitutes Capital Stock, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all other personal property of the Company or such Subsidiary, as applicable, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents; provided that to the extent that the pledge of Capital Stock in a Joint Venture is not permitted by the agreements governing such Joint Venture or any agreement governing Indebtedness of such Joint Venture, the Company shall only be required to use commercially reasonable efforts in good faith to provide a pledge of such Capital Stock in such Joint Venture;

(3) to the extent of any material After-Acquired Property other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(4) to the extent such After-Acquired Property is deemed listed under Category 1 on Annex I hereto, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and

such other Real Property Collateral Requirements as the Collateral Agent may reasonably require; and

(5) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect.

SECTION 4.15 No Restrictive Agreements.

(a) The Company will exercise commercially reasonable efforts in good faith so that it will not, and will not permit any of its Subsidiaries to, enter into any Joint Venture after the Issue Date governed by any agreement, or after the Issue Date amend any agreement governing any Joint Venture, to the extent such agreement prohibits (or, in the case of an amendment, prohibits to a greater extent than the existing agreement) (i) the pledge to secure the Secured Obligations of the Capital Stock in any Subsidiary directly or indirectly owning Capital Stock in, such Joint Venture or (ii) such Subsidiary or any Subsidiary owning Capital Stock (directly or indirectly) in such Subsidiary from being or becoming a Subsidiary Guarantor (it being understood that no such Subsidiary Guarantee shall be required if, notwithstanding the use of commercially reasonable efforts in good faith, the joint venture partner(s) do not permit such Subsidiary Guarantee).

(b) The Company will exercise commercially reasonable efforts in good faith so that it will not, and will not permit any Subsidiary to, incur any Indebtedness after the Issue Date governed by any agreement, or after the Issue Date amend any agreement governing Indebtedness, to the extent such agreement prohibits (or, in the case of an amendment, prohibits to a greater extent than the existing agreement) (i) the pledge to secure the Secured Obligations of the Capital Stock in any Person directly or indirectly owning Capital Stock in, such Subsidiary or (ii) such Subsidiary or any Subsidiary owning such Capital Stock (directly or indirectly) in such Subsidiary from being or becoming a Subsidiary Guarantor (it being understood that no such Subsidiary Guarantee shall be required if, notwithstanding the use of commercially reasonable efforts, the applicable lenders do not permit such Subsidiary Guarantee).

SECTION 4.16 Existence.

Except as otherwise permitted pursuant to the terms hereof (including consolidation and merger permitted by Section 5.01), the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate, partnership, limited liability company or other existence, and shall do or cause to be done all things necessary to keep in full force and effect the existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of any such Subsidiary; provided, however, that shall not be required to preserve the existence of any of its Subsidiaries if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Holders.

ARTICLE 5
Successor Company

SECTION 5.01 Company and Guarantors May Consolidate, Etc., Only on Certain Terms.

(a) Other than in connection with and pursuant to the express written terms of the Plan of Reorganization, the Company shall not, in any transaction or series of related transactions, consolidate or amalgamate with or merge into any Person or sell, lease, assign, transfer or otherwise convey all or substantially all its assets to any Person, in each case, unless:

(1) either (A) the Company shall be the continuing Person (in the case of a merger), or (B) the successor Person (if other than the Company) formed by or resulting from such consolidation, amalgamation or merger, or to which such sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Company is made, (i) shall be a corporation, limited liability company or partnership organized and existing under the laws of the United States of America, any state thereof or the District of Columbia; and (ii) shall, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor Person and delivered to the Trustee, in form satisfactory to the Trustee, expressly assume the due and punctual performance and observance of the payment and other obligations in this Indenture and the outstanding Securities and the Security Documents, on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction, no Default or Event of Default, shall have occurred and be continuing;

(3) the successor Person shall take such action (or agree to take such action) as may be reasonably necessary to cause any property or assets that constitute Collateral owned by or transferred to the successor Person to be subject to the Liens securing the Secured Obligations in the manner and to the extent required under the Secured Debt Documents and shall deliver an Opinion of Counsel as to the enforceability of any amendments, supplements or other instruments with respect to the Secured Debt Documents to be executed, delivered, filed and recorded, as applicable, and such other matters as the Trustee or Collateral Agent, as applicable, may request; and

(4) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such transaction complies with, and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article, and that all conditions precedent herein provided for relating to such transaction have been complied with.

For purposes of the foregoing, any sale, lease, assignment, transfer or other conveyance of all or any of the assets of one or more Subsidiaries of the Company (other than to the Company or another Subsidiary), which, if such assets were owned by the Company would constitute all or substantially all of the Company's assets, shall be deemed to be the conveyance of all or substantially all of the assets of the Company to any Person.

(b) Other than in connection with and pursuant to the express written terms of the Plan of Reorganization or as otherwise permitted under this Indenture, the Operating Partnership shall not, and the Company shall not permit any Subsidiary Guarantor to, sell or otherwise dispose of all or substantially all of the assets of any Subsidiary Guarantor, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person (other than the Company or another Guarantor) unless either:

(1) immediately after giving effect to such transaction or transactions, on a pro forma basis (and treating any Indebtedness which becomes an Obligation of the resulting, surviving or transferee Person as a result of such transaction as having been issued by such Person at the time of such transaction) no Default shall have occurred and be continuing;

(2) the Person acquiring the assets in such sale or disposition or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) (the “*Successor Guarantor*”) (A) shall be a Person organized and existing under the laws of the jurisdiction under which the Guarantor was organized or under the laws of the United States of America, or any state thereof or the District of Columbia and (B) assumes all obligations of the Guarantor under its Note Guarantee in this Indenture and all Security Documents to which it is a party pursuant to agreements or instruments satisfactory in form to the Trustee;

(3) in the case of the Subsidiary Guarantor, the Successor Guarantor, if applicable, shall take such action (or agree to take such action) as may be reasonably necessary to cause any property or assets that constitute Collateral owned by or transferred to the Successor Guarantor to be subject to the Liens securing the Secured Obligations in the manner and to the extent required under the Secured Debt Documents and shall deliver an Opinion of Counsel as to the enforceability of any amendments, supplements or other instruments with respect to the Secured Debt Documents to be executed, delivered, filed and recorded, as applicable, and such other matters as the Trustee or Collateral Agent, as applicable, may request; and

(4) the Company delivers to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such transaction complies with and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article, and that all conditions precedent herein provided for relating to such transaction have been complied with.

(5) solely in the case of a Subsidiary Guarantor (and not in the case of the Operating Partnership), the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all of the assets of the Guarantor (in each case other than to the Company or a Subsidiary Guarantor) otherwise permitted by Section 4.03 and the other provisions of this Indenture and the Net Available Cash of such sale or other disposition are applied in accordance with Section 4.03 and the other provisions of this Indenture.

SECTION 5.02 REIT May Consolidate, Etc., Only on Certain Terms.

The REIT shall not, in any transaction or series of related transactions, consolidate or amalgamate with or merge into any Person or sell, lease, assign, transfer or otherwise convey all or substantially all its assets to any Person, in each case, unless:

(1) either (A) the REIT shall be the continuing Person (in the case of a merger), or (B) the successor Person (if other than the REIT) formed by or resulting from such consolidation, amalgamation or merger, or to which such sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the REIT is made, (i) shall be a corporation, limited liability company or partnership organized and existing under the laws of the United States of America, any state thereof or the District of Columbia; and (ii) shall, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor Person and delivered to the Trustee, in form satisfactory to the Trustee, expressly assume the due and punctual performance and observance of the payment and other obligations in this Indenture and the Limited Guarantee on the part of the REIT to be performed or observed;

(2) immediately after giving effect to such transaction, no Default or Event of Default, shall have occurred and be continuing; and

(3) the REIT shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, sale, lease, assignment, transfer or other conveyance and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

For purposes of the foregoing, any sale, lease, assignment, transfer or other conveyance of all or any of the assets of one or more Subsidiaries of the REIT (other than to the REIT or another Subsidiary), which, if such assets were owned by the REIT would constitute all or substantially all of the REIT's assets, shall be deemed to be the conveyance of all or substantially all of the assets of the REIT to any Person.

SECTION 5.03 Successor Person Substituted for Company or REIT.

If the Company or the REIT shall, in any transaction or series of related transactions, consolidate or amalgamate with or merge into any Person or sell, lease, assign, transfer or otherwise convey all or substantially all its assets to any Person, in each case in accordance with Section 5.01(a) or Section 5.02, as applicable, the successor Person formed by or resulting from such consolidation, amalgamation or merger or to which such sale, lease, assignment, transfer or other conveyance of all or substantially all of the properties and assets of the Company or the REIT, as applicable, is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Company or the REIT, as applicable, under this Indenture, with the same effect as if such successor Person had been named as the Company or the REIT, as applicable, herein; and thereafter, except in the case of a lease, the predecessor Person shall be released from all obligations and covenants under this Indenture and all outstanding Securities and the Security Documents. The Trustee shall enter into a supplemental indenture to evidence the succession and substitution of such Person and such release of the Company or the REIT, as applicable.

ARTICLE 6
Defaults and Remedies

SECTION 6.01 Events of Default. An “Event of Default” occurs if one of the following shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be involuntary or be effected by operation of law):

(1) the Company defaults in any payment of interest on any Security when the same becomes due and payable, and such default continues for a period of 30 days;

(2) the Company (A) defaults in the payment of the principal of, or premium on, if any, any Security when the same becomes due and payable at its Stated Maturity, upon optional or mandatory redemption, upon declaration of acceleration or otherwise, or (B) fails to purchase Securities when required pursuant to this Indenture;

(3) [reserved];

(4) the Company, the REIT (solely with respect to the Limited Guarantee) or any Guarantor fails to comply with any of its agreements contained in the Securities, this Indenture (other than those referred to in clause (1) or (2) above) or any Security Document and such failure continues for 30 days after the notice specified below; provided, that in the case of a failure to comply with Section 4.12 of this Indenture, such period of continuance of such default shall be 90 days after the notice specified below;

(5) Any Indebtedness (other than the Other Secured Notes) of the Company, the REIT, any Guarantor or any Significant Subsidiary that is or becomes recourse to the Company, the REIT, any Guarantor or any Significant Subsidiary is not paid within any applicable grace or cure period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$150.0 million, or its foreign currency equivalent at the time, and such acceleration continues for 30 days after the notice specified below;

(6) the Company, any Guarantor, the REIT or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

or

(D) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency;

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company, the REIT, any Guarantor or any Significant Subsidiary in an involuntary case;

(B) appoints a Custodian of the Company, the REIT, any Guarantor or any Significant Subsidiary or for any substantial part of its property; or

(C) orders the winding up or liquidation of the Company, the REIT, any Guarantor or any Significant Subsidiary;

or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 60 days;

(8) (i) any judgment or decree for the payment of money in excess of \$25.0 million or its foreign currency equivalent at the time such judgment or decree is entered against the Company or any Significant Subsidiary (net of any amounts which are covered by enforceable insurance policies issued by solvent carriers or by third party indemnities), remains outstanding for a period of 60 consecutive days following the entry of such judgment or decree and is not discharged, waived or the execution thereof stayed[, (ii) any judgment or decree for the payment of money in excess of \$150.0 million or its foreign currency equivalent at the time such judgment or decree is entered against the REIT or the Operating Partnership (net of any amounts which are covered by enforceable insurance policies issued by solvent carriers or by third party indemnities), remains outstanding for a period of 60 consecutive days following the entry of such judgment or decree and is not discharged, waived, the execution thereof stayed or otherwise bonded, or (iii) any warrant, writ of attachment, execution or similar process shall be issued against any property of the REIT or the Operating Partnership which exceeds, individually or together with all other such warrants, writs, executions and processes, \$150.0 million and such warrant, writ, execution or process shall not be paid, discharged, vacated, stayed or bonded for a period of 60 consecutive days];

(9) any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases to be in full force and effect (other than in accordance with the terms of such Note Guarantee) or any Guarantor denies or disaffirms its obligations under its Note Guarantee (other than in accordance with the terms of such Note Guarantee);

(10) the occurrence of either of the following:

(A) except as permitted by the Security Documents, any Lien purported to be granted under any Security Document on Collateral, individually or in the aggregate, having a Fair Market Value in excess of \$50.0 million, ceases to be an enforceable and perfected first priority Lien, subject to the Collateral Agency and Intercreditor Agreement and Permitted Collateral Liens and such default is not remedied within 60 days after the notice specified below; or

(B) the Company or any other Grantor, or any Person acting on behalf of any of them, denies or disaffirms, in writing, any obligation of the Company or

any other Grantor set forth in or arising under any Security Document establishing Liens securing the Secured Obligations;

(11) the occurrence and continuance of an “Event of Default” under (and as defined in) the Other Secured Notes Indenture;

(12) default under any Indebtedness of or Guarantee by the Operating Partnership, the REIT, the New Bank Claim Borrower or Subsidiary of the Operating Partnership (other than the Company or a Subsidiary of the Company) with an aggregate principal amount in excess of \$150.0 million, whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, unless the New Bank Claim Borrower or the Operating Partnership has agreed to a foreclosure or similar arrangement for any property that does not secure or constitute collateral under the New Bank Term Loan Facility; or

(13) the Limited Guarantee is not (or is claimed by the REIT not to be) in full force and effect with respect to the Securities.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term “Bankruptcy Law” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors. The term “Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clauses (4) or (5) or (10)(A) is not an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the outstanding Securities notify the Company of the Default and the Company does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default”.

The Company shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officer’s Certificate of any Event of Default under clauses (1), (2), (4), (5), (8), (9), (10), (11), (12) and (13), its status and what action the Company is taking or proposes to take with respect thereto.

SECTION 6.02 Acceleration. (a) If an Event of Default (other than an Event of Default specified in Section 6.01(6) or (7) with respect to the Company) occurs and is continuing, upon receipt by the Trustee of written direction from the Holders of a majority in principal amount of the Securities, the Trustee by written notice to the Company, or the Holders of at least 25% in principal amount of the Securities by written notice to the Company and the Trustee, may declare the principal of and accrued but unpaid interest and relevant or applicable premium, Acceleration Premium or redemption price on all the Securities to be due and payable. Upon such a declaration, such principal, interest and applicable premium, Acceleration Premium or redemption price shall be due and payable immediately. If an Event of Default specified in Section 6.01(6) or (7) with respect to the Company occurs, the principal of and interest and applicable premium, Acceleration

Premium or redemption price on all the Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in principal amount of the Securities by notice to the Trustee and the Company may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of acceleration. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

(b) Notwithstanding the foregoing, if an Event of Default under Section 6.01(5) has occurred and is continuing, such Event of Default and any consequential acceleration (to the extent not in violation of any applicable law or in conflict with any judgment or decree of a court of competent jurisdiction) shall be automatically rescinded if (i) the Indebtedness that is the subject of such Event of Default under Section 6.01(5) has been repaid or (ii) if the default relating to such Indebtedness is waived by the holders of such Indebtedness or cured, and if such Indebtedness has been accelerated, then the holders thereof have rescinded their declaration of acceleration with respect thereto, and (iii) any other existing Events of Default, except nonpayment of principal, premium or interest on the Securities that became due solely because of the acceleration of the Securities, have been cured and waived.

(c) (i) If the Securities are accelerated or otherwise become due prior to their Stated Maturity, in each case, in respect of any Event of Default specified in Section 6.01(6) or (7) with respect to the Company (including the acceleration of claims by operation of law) occurring on or after [May 15], 2023, the amount of the principal and premium due on the Securities shall equal the redemption price applicable to an optional redemption of the Securities as set forth in Section 3.08 in effect on the date of such acceleration as if such acceleration were an optional redemption of the Securities accelerated (the “*Redemption Price Premium*”), and the Redemption Price Premium (including principal) and all accrued and unpaid interest will be immediately due and payable as though the Securities were optionally redeemed.

(ii) If the Securities are accelerated or otherwise become due prior to their Stated Maturity, in each case, in respect of any Event of Default specified in Section 6.01(6) or (7) with respect to the Company (including the acceleration of claims by operation of law) in the case of an Event of Default occurring prior to [May 15], 2023, the amount of principal of, accrued and unpaid interest and premium on the Securities that becomes due and payable shall equal 100% of the principal amount of the Securities plus the Acceleration Premium plus accrued and unpaid interest, if any.

(iii) In any such case of clauses (i) or (ii) above, the Redemption Price Premium or the Acceleration Premium, as applicable, shall constitute part of the Notes Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement the Company and the Guarantors on the one hand and the Holders on the other hand as to a reasonable calculation of each Holder’s lost profits as a result thereof. Any Redemption Price Premium or Acceleration Premium, as applicable, payable pursuant to the above shall be presumed to be the liquidated damages sustained by each Holder as the result of the acceleration, and each of the Company and the Guarantors agrees that it is reasonable under the circumstances. The Redemption Price Premium or the Acceleration Premium, as applicable, shall also be payable in the event the Securities (and/or this Indenture) are satisfied or released by foreclosure (whether by

power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH OF THE COMPANY AND THE GUARANTORS EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREMIUMS IN CONNECTION WITH ANY SUCH ACCELERATION, ANY RESCISSION OF SUCH ACCELERATION OR THE COMMENCEMENT OF ANY BANKRUPTCY OR INSOLVENCY EVENT. Each of the Company and the Guarantors expressly agrees (to the fullest extent it may lawfully do so) that: (A) each of the Redemption Price Premium and the Acceleration Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Redemption Price Premium or the Acceleration Premium, as applicable shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Holders, the Company and the Guarantors giving specific consideration in this transaction for such agreement to pay the Redemption Price Premium or the Acceleration Premium, as applicable; and (D) the Company and the Guarantors shall be estopped hereafter from claiming differently than as agreed to in this paragraph. Each of the Company and the Guarantors expressly acknowledges that its agreement to pay the Redemption Price Premium or the Acceleration Premium, as applicable, to the Holders as herein described is a material inducement to Holders to purchase the Securities.

SECTION 6.03 Other Remedies. Subject to the Collateral Agency and Intercreditor Agreement, if an Event of Default occurs and is continuing and subject to the Trustee's receipt of written direction from the Holders of a majority in principal amount of the Securities, the Trustee may pursue any available remedy to collect the payment of principal of or interest and premium on the Securities or to enforce the performance of any provision of the Securities, this Indenture and the Security Documents.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent required by law, all available remedies are cumulative.

SECTION 6.04 Waiver of Past Defaults. The Holders of a majority in principal amount of the Securities by written notice to the Trustee (including, without limitation, in connection with a purchase of, or tender offer or exchange offer for, Securities) may waive an existing Default and its consequences except a Default (a) in the payment of the principal of or interest and premium on a Security, (b) arising from the failure to redeem or purchase any Security when required pursuant to this Indenture or (c) in respect of a provision that under Section 9.02 cannot be amended without the consent of each Securityholder affected. When a Default is waived, it is deemed cured and the Company, the Trustee and the Securityholders shall be restored to their former position and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05 Control by Majority. The Holders of a majority in principal amount of the Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee.

However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other Securityholders or would involve the Trustee in personal liability; provided, however, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses, liabilities and expenses caused by taking or not taking such action.

SECTION 6.06 Limitation on Suits. Except to enforce the right to receive payment of principal, premium or interest when due, no Securityholder may pursue any remedy with respect to this Indenture or the Securities unless:

- (1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (2) the Holders of at least 25% in principal amount of the Securities make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee security or indemnity acceptable to the Trustee in its sole discretion against any loss, liability or expense;
- (4) the Trustee does not comply with the written request within 60 days after receipt of the request and the offer of security or indemnity; and
- (5) the Holders of a majority in principal amount of the Securities do not give the Trustee a written direction inconsistent with the request during such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder. In the event that the Definitive Securities are not issued to any beneficial owner promptly after the Registrar has received a request from the Holder of a Global Security (as defined in the Appendix) to issue such Definitive Securities to such beneficial owner of its nominee, the Company expressly agrees and acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to this Indenture, the right of such beneficial holder of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial holder's Securities as if such Definitive Securities had been issued.

SECTION 6.07 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest and premium on the Securities held by such Holder, on the respective due dates expressed in the Securities (or, in the case of a redemption, on the redemption date or, in the case of a purchase, on the Asset Sale Excess Proceeds Offer Purchase Date), or to bring suit for the enforcement of any such payment, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08 Collection Suit by Trustee. Subject to the Collateral Agency and Intercreditor Agreement, if an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust

against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.07, and against the REIT for any amounts owed by it under the terms of the Limited Guarantee.

SECTION 6.09 Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, the Collateral Agent and the Securityholders allowed in any judicial proceedings relative to the Company, the REIT, its creditors or its property and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent and each of their agents and counsel, and any other amounts due to the Trustee or Collateral Agent, as applicable, under Section 7.07.

No provision of this Indenture shall be deemed to authorize the Trustee or Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, compromise, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee or Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10 Priorities. Subject to the Collateral Agency and Intercreditor Agreement, if the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the Trustee, the Collateral Agent and their agents for amounts due under Section 7.07;

SECOND: to Securityholders for amounts due and unpaid on the Securities for principal and interest ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Company as provided in a written direction from the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. At least 15 days before such record date, the Company shall mail to each Securityholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does

not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate principal amount of the Securities.

SECTION 6.12 Waiver of Stay or Extension Laws. The Company (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7

Trustee

SECTION 7.01 Duties of Trustee. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of negligence or wilful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own wilful misconduct as determined by a final non-appealable order of a court of competent jurisdiction, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.

SECTION 7.02 Rights of Trustee.

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any such agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be deemed to have notice of any Default or Event of Default, except a Default under Sections 6.01(1) or 6.01(2) (but only if the Trustee is also the Paying Agent), unless written notice of any event which is in fact such a Default or Event of Default is received by a Trust Officer at its office described in Section 11.02 herein from the Company or the Holders of 25% in aggregate principal amount of the outstanding Securities, and such notice references the specific Default or Event of Default, the Securities and this Indenture and states that it is a "Notice of Default". In the absence of any such notice, the Trustee may conclusively assume that no such Default or Event of Default exists.

(g) In no event shall the Trustee be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including, but not

limited to, lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(h) The Trustee may conclusively rely on and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document (whether in its original, electronic or facsimile form) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder, including as Collateral Agent.

(j) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or the other Note Documents at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered, and if requested, provided, to the Trustee security or indemnity satisfactory to the Trustee against the losses, liabilities and expenses which may be incurred therein or thereby.

(k) The Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is actually known to a Trust Officer of the Trustee or unless written notice of such fact or matter is received by the Trustee at the corporate trust office of the Trustee specified in Section 11.02.

(l) Whenever in the administration of this Indenture or the other Note Documents the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder or thereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of negligence or wilful misconduct on its part, conclusively rely upon an Officer's Certificate.

(m) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgement, bond, debenture, note, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and the Trustee will incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(n) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(o) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture or the other Note Documents.

(p) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(q) The permissive rights of the Trustee enumerated hereunder shall not be construed as duties.

Notwithstanding anything to the contrary in this Indenture, other than this Indenture and the Securities, the Trustee will have no duty to know or inquire as to the performance or non-performance of any provision of any other agreement, instrument, or contract, nor will the Trustee be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or contract, whether or not a copy of such agreement has been provided to the Trustee

SECTION 7.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity (including in its capacity as the Collateral Agent) may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee or Collateral Agent. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as Trustee (if this Indenture has been qualified under the TIA) or resign. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

SECTION 7.04 Trustee's Disclaimer. The Trustee shall not be (A) responsible for and makes no representation as to the validity or adequacy of this Indenture, the Securities or any other Note Documents, (B) accountable for the Company's use of its proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision of this Indenture, (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee and (D) responsible for any statement or recital in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

SECTION 7.05 Notice of Defaults. If a Default occurs and is continuing of which the Trustee has received written notice, the Trustee shall send to each Securityholder notice of the Default within 90 days after it occurs. Notwithstanding the immediately preceding sentence, except in the case of a Default involving the payment of principal of or interest or premium on any Security (including payments pursuant to the mandatory redemption provisions of such Security, if any), the Trustee may withhold the notice if and so long as the Trustee in good faith determines that withholding the notice is not opposed to the interests of the Securityholders.

SECTION 7.06 TIA and Listings. As promptly as practicable after each August 15 beginning with August 15, 2022, the Trustee shall mail to each Securityholder a brief report dated as of August 15 that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). During the same time period specified above, the Trustee also shall comply with TIA § 313(b), which section relates to the release or substitution of certain property from the Lien of this

Indenture and advances made by the Trustee. The Trustee will also transmit by mail all reports as required by TIA § 313(c).

If this Indenture has been qualified under the TIA, a copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each stock exchange (if any) on which the Securities are listed in accordance with TIA § 313(d). The Company agrees to notify promptly the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

SECTION 7.07 Compensation and Indemnity. The Company shall pay to the Trustee from time to time reasonable compensation for its services under this Indenture and the Securities as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall promptly reimburse the Trustee upon request for all reasonable disbursements, advances and expenses Incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company shall indemnify the Trustee and its respective officers, directors, employees and agents against any and all loss, liability or expense (including attorneys' fees) Incurred by any of them in connection with the acceptance or administration of this trust and the performance of its duties hereunder. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense Incurred by the Trustee through the Trustee's own wilful misconduct or negligence.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities.

The Company's payment obligations pursuant to this Section shall survive the discharge of this Indenture and the resignation and removal of the Trustee hereunder. When the Trustee Incurs expenses after the occurrence of a Default specified in Section 6.01(6) or (7) with respect to the Company, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

The Trustee will comply with the provisions of TIA § 313(b)(2) to the extent applicable.

SECTION 7.08 Replacement of Trustee. The Trustee may resign at any time by so notifying the Company. The Holders of a majority in principal amount of the Securities may remove the Trustee by so notifying the Trustee in writing with 30 days' prior written notice and may appoint a successor Trustee. The Company shall remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged bankrupt or insolvent;

- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns, is removed by the Company or by the Holders of a majority in principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company and the REIT. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by a Securityholder of at least six months, fails to comply with Section 7.10, such Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

SECTION 7.09 Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee and shall have all of the rights, powers and duties of the Trustee under this Indenture.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture and any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.10 Eligibility; Disqualification. There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100.0 million as set forth in its most recent published annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

SECTION 7.11 Preferential Collection of Claims Against Company. The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE 8

Discharge of Indenture; Defeasance

SECTION 8.01 Discharge of Liability on Securities; Defeasance. (a) This Indenture and the other Note Documents (insofar as related to this Indenture and the Securities) shall, subject to Section 8.01(c), cease to be of further effect and all Collateral shall be released from the Liens securing the Notes Obligations as to all outstanding Securities when both (x) either (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities not theretofore delivered to the Trustee for cancellation (1) have become due and payable, whether at maturity or on a redemption date as a result of the mailing of a notice of redemption pursuant to Article 3 hereof or (2) will become due and payable within one year at the Stated Maturity or within 60 days as the result of the giving of any irrevocable and unconditional notice of redemption pursuant to Article 3 hereof, and, in the case of clause (ii), the Company irrevocably deposits with the Trustee cash in U.S. dollars or non-callable U.S. Government Obligations or a combination thereof, in amounts sufficient to pay at maturity or upon redemption all outstanding Securities, including interest and premium, if any, thereon to maturity or such redemption date (other than Securities replaced pursuant to Section 2.07), and (y) the Company pays all other sums payable hereunder by the Company. The Trustee and Collateral Agent shall acknowledge satisfaction and discharge of this Indenture (subject to Section 8.01(c)) and the other Note Documents (insofar as related to this Indenture and the Securities) on demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 8.01(c) and 8.02, the Company at any time may terminate (1) all its obligations under the Securities and this Indenture ("*legal defeasance option*") or (2) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 and the operation of Sections 6.01(5), 6.01(6), 6.01(7), 6.01(8), 6.01(9), 6.01(10), 6.01(11), 6.01(12), and 6.01(13) (but, in the case of Sections 6.01(6) and 6.01(7), with respect only to Significant Subsidiaries and Guarantors) ("*covenant defeasance option*"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default with respect thereto. If the Company exercises its covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Sections 6.01(5), 6.01(6), 6.01(7), 6.01(8), 6.01(9), 6.01(10), 6.01(11), 6.01(12), and 6.01(13) (but, in the case of Sections 6.01(6) and 6.01(7), with respect only to Significant Subsidiaries and Guarantors). If the Company exercises its legal defeasance option or its covenant defeasance option, (i) each Guarantor, if any, shall be released from all its obligations with respect to its Note Guarantee and (ii) the REIT shall be released from all its obligations with respect to its Limited Guarantee, in each case except to the extent necessary to guarantee any of the Company's continuing obligations pursuant to Section 8.01(c); and (iii) all Collateral shall be released from the Liens securing the Notes Obligations.

Upon satisfaction of the conditions set forth herein, and satisfaction of the other covenants or obligations under the other Note Documents (insofar as related to the Securities and this Indenture), and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates and the Collateral shall be released as to the Notes Obligations.

(c) Notwithstanding clauses (a) and (b) above, the Company's obligations in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 7.07 and 7.08 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Company's obligations in Sections 7.07, 8.04 and 8.05 shall survive.

SECTION 8.02 Conditions to Defeasance. The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(1) the Company irrevocably deposits with the Trustee cash in U.S. dollars or U.S. Government Obligations or a combination thereof for the payment of principal of and interest on the Securities to maturity or redemption, as the case may be;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest and premium when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest and premium when due on all the Securities to maturity or redemption, as the case may be;

(3) 123 days pass after the deposit is made and during the 123-day period no Default specified in Sections 6.01(6) or (7) with respect to the Company occurs which is continuing at the end of the period;

(4) the deposit does not constitute a default under any other agreement binding on the Company;

(5) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(6) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that since the Issue Date (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred; *provided* that, notwithstanding the foregoing, the Opinion of Counsel required by the immediately preceding sentence with respect to a legal defeasance need not be delivered if all of the Securities not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable at their Stated Maturity within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

(7) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(8) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities as contemplated by this Article 8 have been complied with.

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date in accordance with Article 3.

SECTION 8.03 Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

SECTION 8.04 Repayment to the Company. The Trustee and the Paying Agent shall promptly turn over to the Company upon written request any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest

that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Company for payment as general creditors.

SECTION 8.05 Indemnity for Government Obligations. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.06 Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's, the REIT's and each Guarantor's obligations under this Indenture, the Securities and other Note Documents (insofar as related to this Indenture and the Securities) shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; provided, however, that, if the Company has made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE 9 Amendments

SECTION 9.01 Without Consent of Holders. The Company, the REIT, the Guarantors, the Trustee and, in the case of any Security Document, the Collateral Agent may amend any of this Indenture, the Securities or the other Note Documents without notice to or consent of any Securityholder:

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to comply with or effect (including, without limitation, by execution of new Security Documents with respect to any transferee or surviving person and releases of any transferor from any applicable Security Documents) the provisions of Article 5;
- (3) to provide for uncertificated Securities in addition to or in place of certificated Securities; provided, however, that the uncertificated Securities are issued in registered form for purposes of Section 163(f) of the Code;
- (4) to provide for any Guarantee of the Securities (including a Limited Guarantee if required pursuant to Section 5.02 of this Indenture), to further secure the Securities (including by any amendment or supplement to any Security Document (or schedule thereto)) or to confirm and evidence the release, termination or discharge of any Note Guarantee of the Securities, the REIT's Limited Guarantee of the Securities or any Lien securing the Securities or any Note Guarantee when such release, termination or discharge is permitted by Section 10.05, Section 12.05 or Section 13.02 or otherwise by this Indenture;

- (5) to add to the covenants of the Company, the REIT or any Guarantor for the benefit of the Holders or to surrender any right or power herein conferred upon the Company, the REIT or any Guarantor;
- (6) to comply with any requirements of the SEC in connection with qualifying this Indenture under the TIA;
- (7) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Securities; provided, however, that (a) compliance with this Indenture as so amended would not result in Securities being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer Securities;
- (8) to make, complete or confirm any grant of Collateral permitted or required by any of the Note Documents;
- (9) to release or subordinate Liens on Collateral in accordance with the Security Documents;
- (10) to comply with the requirements of any securities depository with respect to the Securities;
- (11) with respect to the Security Documents, as provided in the Collateral Agency and Intercreditor Agreement;
- (12) to evidence and provide for the acceptance and appointment (x) under this Indenture of a successor Trustee or Collateral Agent hereunder pursuant to the requirements hereof or (y) under the Security Documents of a successor Collateral Agent thereunder pursuant to the requirements thereof;
- (13) to make any change that does not adversely affect the rights of any Holder;
- (14) to evidence the succession of another Person to the REIT and the assumption by any such successor of the covenants of the REIT contained herein and in the Limited Guarantee;
- (15) to effect amendments, supplements or modifications to the Security Documents (a) to add or remove other parties to the Other Secured Notes Indenture or the Security Documents in respect of any Other Secured Notes Obligations permitted to be incurred under this Indenture and the Collateral Agency and Intercreditor Agreement or (b) at the direction of the Other Secured Notes Trustee, that (i) only affect the rights of the Other Secured Noteholders, (ii) are administrative or ministerial in nature or correct typographical errors or omissions, (iii) have only the effect of preserving, perfecting or establishing the priority of the Liens on the Collateral as contemplated by the Security Documents or the rights of the Collateral Agent therein or (iv) do not otherwise materially adversely affect the rights of Holders of the Securities; or
- (16) to implement the express written terms of the Plan of Reorganization.

Upon the written request of the Company accompanied by a Board Resolution of the Company authorizing the execution of any such amended or supplemental indenture or any amendment or supplement to any Security Document, and upon receipt by the Trustee of the documents described in Section 9.06 hereof, the Trustee shall join with the Company, the REIT and the Guarantors in the execution of (and (in the case of any Security Document) shall direct the Collateral Agent to execute (and deliver to the Collateral Agent its written consent to the execution by the Collateral Agent of)) such amended or supplemental indenture or such Security Document amendment or supplement authorized or permitted by the terms of this Indenture, unless such amended or supplemented indenture or such Security Document amendment or supplement affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into (or, in the case of any Security Document, so direct and deliver its consent to the Collateral Agent with respect to) such amended or supplemental indenture or such Security Document amendment or supplement.

After an amendment under this Section becomes effective, the Company shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.02 With Consent of Holders. The Company, the REIT, the Guarantors, the Trustee and the Collateral Agent (in the case of any Security Document), if applicable, may amend this Indenture, the Securities or the other Note Documents with the written consent of the Holders of at least a majority in principal amount of the Securities then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Securities), and any past default or compliance with any provisions of this Indenture, the Securities or the other Note Documents may also be waived with the consent of the Holders of at least a majority in principal amount of the Securities then outstanding. However, without the consent of each Securityholder affected thereby, an amendment or waiver may not:

- (1) reduce the amount of Securities whose Holders must consent to an amendment or waiver;
- (2) reduce the rate of or extend the time for payment of interest on any Security;
- (3) reduce the principal of or extend the Stated Maturity of any Security;
- (4) reduce the amount payable upon the redemption of the Securities or change the time at which any Security is required to be redeemed pursuant to Section 4.04 or Section 3.07(c) or may be redeemed as described in Article 3 hereto;
- (5) after the obligation of the Company to make an Asset Sale Excess Proceeds Offer with respect to an Asset Sale has arisen in accordance with Section 4.03, reduce the Asset Sale Excess Proceeds Offer Price or amend or modify in any manner adverse to the rights of the Holders of the Securities the Company's obligation to pay the Asset Sale Excess Proceeds Offer Price;
- (6) make any Security payable in money other than that stated in the Security;

- (7) impair the right of any Holder to receive payment of principal of and interest and relevant or applicable premium, Acceleration Premium or redemption price on such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;
- (8) expressly subordinate the Securities or any Note Guarantee in right of payment or otherwise modify the ranking in right of payment thereof to any other Indebtedness of the Company, the REIT or the Guarantors;
- (9) make any change in the provisions of the Collateral Agency and Intercreditor Agreement or this Indenture dealing with the application of proceeds of the Collateral that would adversely affect the Securityholders;
- (10) make any change in Section 6.04 or 6.07 or the second sentence of this Section;
- (11) make any change in, or release other than in accordance with the provisions of this Indenture, any Note Guarantee that would adversely affect the Securityholders; or
- (12) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, the Securities (except a rescission of acceleration of the Securities by the Holders of at least a majority in aggregate principal amount of the then outstanding Securities and a waiver of the payment default that resulted from such acceleration).

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment or waiver under this Indenture by any Holder of Securities given in connection with a tender of such Holder's Securities shall not be rendered invalid by such tender.

In addition, any amendment to, or waiver of, the provisions of the Note Documents that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Securities or subordinating Liens securing the Securities (except as permitted by the terms of the Note Documents) will require the consent of the Holders of at least 66-2/3% in principal amount of the Securities then outstanding.

Upon the written request of the Company and the REIT accompanied by a resolution of the Board of Directors of the Company and a resolution of the Board of Directors of the REIT authorizing the execution of any supplemental indenture entered into to effect any such amendment, supplement or waiver permitted under the terms of this Section, and upon receipt by the Trustee (and the Collateral Agent to the extent applicable) of the documents described in Section 9.06, the Trustee (and the Collateral Agent to the extent applicable) shall join with the Company and the REIT in the execution of such supplemental indenture or supplement or amendment to the Note Documents. After an amendment under this Section becomes effective, the Company shall send to Securityholders a notice briefly describing such amendment. The failure to

give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.03 Compliance with Trust Indenture Act. Subject to Section 11.06, every amendment or supplement to this Indenture or the Securities shall be set forth in a supplemental indenture hereto that complies with the TIA as then in effect.

A consent to any amendment, supplement or waiver under this Indenture or any amendment or supplement to any Note Document by any Holder given in connection with a purchase, tender or exchange of such Holder's Securities shall not be rendered invalid by such purchase, tender or exchange.

SECTION 9.04 Revocation and Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Security shall be a continuing consent and shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver becomes effective upon the execution of such amendment or waiver by the Trustee.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless consent from the Holders of the principal amount of Securities required hereunder for such amendment or waiver to be effective also shall have been given and not revoked within such 120-day period. After an amendment or waiver becomes effective, it will bind every Holder, unless it makes a change described in any of clauses (1) through (12) of Section 9.02, in which case, the amendment or waiver will bind only each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same Indebtedness as the consenting Holder's Security.

SECTION 9.05 Notation on or Exchange of Securities. If an amendment changes the terms of a Security, the Trustee may require the Securityholder to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

SECTION 9.06 Trustee To Sign Amendments. The Trustee shall sign (or, in the case of any Security Document, the Trustee shall direct the Collateral Agent to sign) any amendment,

supplement or waiver authorized pursuant to this Article 9 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee or the Collateral Agent as applicable. If an amendment, supplement or waiver adversely affects the rights, duties, liabilities or immunities of the Trustee or Collateral Agent, the Trustee or the Collateral Agent, as applicable, may but need not sign (or, in the case of any Security Document, the Trustee, may, but need not, direct the Collateral Agent to sign) such amendment, supplement or waiver. In signing (or so directing the Collateral Agent to sign) any amendment, supplement or waiver, each of the Trustee and the Collateral Agent shall be entitled to receive indemnity satisfactory to it and to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and the other Note Documents.

SECTION 9.07 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 9.07.

Without limiting the generality of this Section, unless otherwise provided in or pursuant to this Indenture, (i) a Holder, including a Depository or its nominee that is a Holder of a Global Security, may give, make or take, by an agent or agents duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be given, made or taken by Holders, and a Depository or its nominee that is a Holder of a Global Security may duly appoint in writing as its agent or agents members of, or participants in, such Depository holding interests in such Global Security in the records of such Depository; and (ii) with respect to any Global Security the Depository for which is The Depository Trust Company ("DTC"), any consent or other action given, made or taken by an "agent member" of DTC by electronic means in accordance with the Automated Tender Offer Procedures system or other customary procedures of, and pursuant to authorization by, DTC shall be deemed to constitute the "Act" of the Holder of such Global Security, and such Act shall be deemed to have been delivered to the Company and the Trustee upon the delivery by DTC of an "agent's message" or other notice of such consent or other action having been so given, made or taken in accordance with the customary procedures of DTC.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds,

certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a Person acting in a capacity other than such Person's individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

- (c) The ownership of Securities shall be proved by the Register.

SECTION 9.08 Amendment Affecting Collateral Agent. No amendment or supplement to this Indenture or any Security Document shall adversely affect the rights, duties, liabilities or immunities of the Collateral Agent without the written consent of the Collateral Agent.

ARTICLE 10

Note Guarantees

SECTION 10.01 Guarantees. Each Guarantor hereby unconditionally and irrevocably guarantees, jointly and severally, to each Holder, the Trustee and the Collateral Agent and its successors and assigns (a) the full and punctual payment of principal of and interest and premium on the Securities when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Company under this Indenture, the Securities and the other Note Documents and (b) the full and punctual performance within applicable grace periods of all other obligations of the Company under this Indenture, the Securities and the other Note Documents (all the foregoing being hereinafter collectively called the "*Guaranteed Obligations*"). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Guarantor and that such Guarantor will remain bound under this Article 10 notwithstanding any extension or renewal of any Obligation.

Each Guarantor waives presentation to, demand of, payment from and protest to the Company of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Securities or the Guaranteed Obligations. The obligations of each Guarantor hereunder shall not be affected by (1) the failure of any Holder or the Trustee or the Collateral Agent to assert any claim or demand or to enforce any right or remedy against the Company or any other Person (including any Guarantor) under any of the Note Documents or any other agreement or otherwise; (2) any extension or renewal of any Note Document; (3) any rescission, waiver, amendment or modification of any of the terms or provisions of the Note Documents or any other agreement; (4) the release of any security held by any Holder, the Trustee or the Collateral Agent for the Guaranteed Obligations or any of them; (5) the failure of any Holder, or the Trustee and Collateral Agent to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (6) except, as set forth in Section 10.05, any change in the ownership of such Guarantor.

Each Guarantor further agrees that its Note Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the Trustee to any security held for payment of the Guaranteed Obligations.

Except as expressly set forth in Sections 8.01, 10.02 or 10.05, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Securities or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest and premium on any Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Company or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder or the Trustee has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Company to pay the principal of or interest and premium on any Notes Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Notes Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders, the Trustee or the Collateral Agent, as applicable, an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations, (B) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by law) and (C) all other monetary Guaranteed Obligations of the Company to the Holders, the Trustee or the Collateral Agent.

Each Guarantor further agrees that, as between it, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the Guaranteed Obligations hereby may be accelerated as provided in Article 6 for the purposes of such Guarantor's Note Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) Incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this Section.

SECTION 10.02 Limitation on Liability. Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Guarantor, voidable under

applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

SECTION 10.03 No Waiver. Neither a failure nor a delay on the part of either the Trustee, the Collateral Agent or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee, the Collateral Agent and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.04 Note Guarantee Evidenced by Indenture; No Notation of Note Guarantee. The Note Guarantee of any Guarantor shall be evidenced solely by its execution and delivery of this Indenture (or, in the case of any Guarantor that is not party to this Indenture on the Issue Date, a Guaranty Supplemental Indenture thereto) and not by an endorsement on, or attachment to, any Security of any Note Guarantee or notation thereof. To effect any Note Guarantee of any Guarantor not a party to this Indenture on the Issue Date, such future Guarantor shall execute and deliver a Guaranty Supplemental Indenture substantially in the form of Annex A hereto, which Guaranty Supplemental Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each Guarantor hereby agrees that its Note Guarantee set forth in Section 10.01 hereof shall be and remain in full force and effect notwithstanding any failure to endorse on any Security a notation of such Note Guarantee.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantees set forth in this Indenture on behalf of each of the Guarantors.

SECTION 10.05 Release of Guarantor. A Guarantor will be automatically and unconditionally released from its obligations under this Article 10 (other than any obligation that may have arisen under Section 10.06):

- (1) solely in the case of a Subsidiary Guarantor (and not in the case of the Operating Partnership), in connection with any sale or other disposition of the Capital Stock of such Subsidiary Guarantor or such Subsidiary Guarantor's direct or indirect parent (including by way of merger or consolidation) other than to the Company or a Subsidiary of the Company, if such transaction at the time of such disposition complies with Section 4.03 hereof and the Subsidiary Guarantor ceases to be a Subsidiary of the Company as a result of such transaction;
- (2) if the Company effects either its legal defeasance option or its covenant defeasance option in accordance with Section 8.01(b) hereof or if it satisfies and discharges this Indenture in accordance with Section 8.01(a) hereof;
- (3) any Subsidiary Guarantor becoming an Excluded Non-Guarantor Subsidiary; or

(4) upon the merger, amalgamation or consolidation or liquidation of any Subsidiary Guarantor with and into the Company or another Subsidiary Guarantor, in each case in compliance with the applicable provisions of this Indenture or upon the liquidation of such Guarantor following the transfer of all of its assets to the Company or another Subsidiary Guarantor; provided that the Company or Subsidiary Guarantor acquiring any assets of such Subsidiary Guarantor upon such merger, amalgamation or consolidation or liquidation shall comply with Section 4.14 with respect to such assets and such merger, amalgamation or consolidation or liquidation shall comply with Section 5.01.

At the request of the Company, upon delivery by the Company to the Trustee of an Officer's Certificate to the effect that any of the conditions described in the foregoing clauses (1) — (4) has occurred, the Trustee and the Collateral Agent, as applicable shall execute and deliver such instrument reasonably requested by the Company or such Guarantor evidencing such release.

SECTION 10.06 Contribution. Each Guarantor agrees that, until the indefeasible payment and satisfaction in full in cash of all applicable obligations under the Securities, the Note Guarantees, this Indenture and the Security Documents, such Guarantor waives any claim, and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by such guarantor of its Note Guarantee, whether by subrogation or otherwise, against either the Company or any other Guarantor. Each Guarantor agrees that all Indebtedness and other monetary obligations so arising owed to such Guarantor by the Company or any other Guarantor shall be fully subordinated to the indefeasible payment in full in cash of the obligations of the Company or such other Guarantor, as applicable, with respect to the Securities, the Note Guarantees, this Indenture and the Security Documents. Subject to the two preceding sentences, each Guarantor that makes a payment under its Note Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

ARTICLE 11 **Miscellaneous**

SECTION 11.01 Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA § 318(c), such TIA-imposed duties shall control. If any provision hereof limits, qualifies or conflicts with a provision of the TIA which is required to be a part of and govern this Indenture, such required provision of the TIA shall control. If any provision of this Indenture modifies or excludes any provision of the TIA that may be so modified or excluded, the provision of the TIA shall be deemed to apply to this Indenture as so modified or shall be excluded, as the case may be.

SECTION 11.02 Notices. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Company or any Guarantor:

CBL & Associates HoldCo II, LLC
2030 Hamilton Place Blvd., Suite 500,

Chattanooga, Tennessee 37421-6000
Attention: [Chief Financial Officer]

if to the REIT:

CBL & Associates HoldCo II, LLC
2030 Hamilton Place Blvd., Suite 500,
Chattanooga, Tennessee 37421-6000

Attention: [Chief Financial Officer]

if to the Trustee or Collateral Agent:

Wilmington Savings Fund Society, FSB
500 Delaware Avenue, 11th Floor
Wilmington, DE 19801
Email: phealy@wsfsbank.com
Attention: Patrick Healy

With a copy to (which shall not constitute notice):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Email: Mark.Somerstein@ropesgray.com
Attention: Mark Somerstein, Esq.

The Company, the REIT, any Guarantor, the Trustee or the Collateral Agent by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Securityholder shall be delivered pursuant to the Applicable Procedures of the depository (in the case of a Global Security) or mailed, to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar (if a Definitive Security) and shall be sufficiently given if so delivered or mailed within the time prescribed. Any notice or communication will also be so mailed or delivered electronically to any Person described in TIA § 313(c), to the extent required by the TIA. Notwithstanding any provision of this Indenture to the contrary, so long as the Securities are evidenced by Global Securities, any notice to the Securityholders shall be sufficient if given in accordance with the Applicable Procedures of the Depository within the time prescribed.

Failure to deliver a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Any notice or communication to the Company, the REIT or any Guarantor shall be deemed given or made as of the date so delivered if personally delivered or if delivered electronically, in PDF format; when receipt is acknowledged, if telecopied; and seven calendar days after mailing if

sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee). Any notice or communication to the Trustee or Collateral Agent shall only be deemed delivered upon receipt.

If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee or Collateral Agent shall be effective only upon receipt.

Notwithstanding any other provision of this Indenture or the Securities, where this Indenture or any Security provides for notice of any event (including any notice of redemption or purchase) to a Securityholder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depository pursuant to its Applicable Procedures, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 11.03 Communication by Holders with Other Holders. Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the REIT, any Guarantor, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 11.04 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company or the REIT to the Trustee to take or refrain from taking any action under this Indenture, the Company or the REIT shall furnish to the Trustee:

- (1) an Officer's Certificate in form satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel in form satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 11.05 Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) must comply with the provisions of TIA § 314(e) and shall include:

- (1) a statement that the individual making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of any Person may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or any Guarantor stating that the information with respect to such factual matters is in the possession of the Company or such Guarantor unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 11.06 When Securities Disregarded. Notwithstanding anything to the contrary in this Indenture or any other Note Document, Section 316(a) of the TIA (including the last sentence thereof) is hereby expressly excluded from this Indenture and the other Note Documents for all purposes. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver, consent or approval or other action of Holders, Securities owned by the Company, the REIT, any Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, the REIT or any Guarantor shall be disregarded and deemed not to be outstanding, except that (i) Securities owned by Specified Holders shall not be so disregarded and (ii) for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver, consent approval or other action of Holders, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned that have been pledged in good faith shall not be so disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver, consent, approval or other action of Holders with respect to the Securities and that the pledgee is not the Company, the REIT, any Guarantor or any other Subsidiary of the Company. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

SECTION 11.07 Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 11.08 Legal Holidays. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 11.09 Governing Law. The Laws of the State of New York (including Section 5-1401 of the New York General Obligations Law) shall govern and be used to construe this Indenture, the Limited Guarantee and the Securities without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.

SECTION 11.10 Force Majeure. Neither the Trustee nor the Collateral Agent shall Incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God, epidemic, pandemic or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility); it being understood that the Trustee and the Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 11.11 Waiver of Jury Trial. EACH OF THE COMPANY, THE REIT, THE GUARANTORS, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES, THE GUARANTEES, THE GUARANTY AGREEMENTS, THE OTHER NOTE DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 11.12 No Recourse Against Others. A director, officer, employee, incorporator or stockholder, as such, of the Company, the REIT or any Guarantor shall not have any liability for any obligations of the Company or the REIT under the Securities or this Indenture or of such Guarantor under its Note Guarantee, this Indenture or any other Note Document or for any claim based on, in respect of, or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such claims and liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 11.13 Successors. All agreements of the Company and the REIT in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of the Subsidiary Guarantors in this Indenture shall bind their respective successors.

SECTION 11.14 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes.

SECTION 11.15 Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 11.16 Severability. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 11.17 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or any Guarantor or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 11.18 Benefits of Indenture.

Nothing in this Indenture or in the Securities or the Security Documents, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors hereunder and thereunder, and the Holders of Securities and the Collateral Agent (and, solely in the case of the Security Documents, the holders of Secured Obligations), any benefit or any legal or equitable right, remedy or claim under this Indenture or the Security Documents.

ARTICLE 12

Collateral and Security

SECTION 12.01 Security Documents.

The payment of principal of, and premium, if any, and interest, if any, on the Securities and all other Notes Obligations, when due, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise and whether by the Company pursuant to the Securities or by any Subsidiary Guarantor pursuant to the Note Guarantees, and the performance of all other obligations of the Company and the Subsidiary Guarantors under the Securities, the Note Guarantees and the Security Documents are secured as provided in the Security Documents.

The Collateral will secure, on an equal and ratable basis as specified in the Collateral Agency and Intercreditor Agreement, the Notes Obligations and the Other Secured Notes Obligations and will be pledged by the Company and the Subsidiary Guarantors to the Collateral Agent for the benefit of the Secured Parties. The Collateral pledged by the Company will secure, on an equal and ratable basis as so specified, the Securities and the other Secured Notes issued under the Other Secured Notes Indenture and the Company's Obligations under the Security

Documents; and the Collateral pledged by any Subsidiary Guarantor will secure, on an equal and ratable basis as so specified, the Note Guarantee of such Subsidiary Guarantor and the guarantee by such Subsidiary Guarantor of the Other Secured Notes issued under the Other Secured Notes Indenture and such Subsidiary Guarantor's Obligations under the Security Documents. Only the Collateral Agent will be entitled to enforce the Liens granted under the Security Documents.

SECTION 12.02 Further Assurances; Opinions; Real Property Collateral Requirements.

(a) The Subsidiary Guarantors will, and the Company will cause each of its Subsidiaries to, do or cause to be done all acts and things which may be required, or which the Collateral Agent from time to time may request, to assure and confirm that the Collateral Agent at all times holds, for the benefit of the holders of Secured Obligations, duly created, enforceable and perfected first priority Liens (subject only to Permitted Collateral Liens) upon the Collateral as contemplated by this Indenture and the Security Documents and to comply with the applicable provisions of the TIA.

(b) The Company shall furnish or cause to be addressed and furnished to the Trustee and (in the case of clauses (1) and (3)) the Collateral Agent:

(1) on the Issue Date, Opinions of Counsel substantially in the form of the Opinions of Counsel delivered on the Issue Date to the Other Secured Notes Trustee relating to (i) any of the Collateral or the Security Documents and (ii) the due authorization, execution and delivery of the Securities, this Indenture, the Note Guarantees and the Security Documents, and the validity and enforceability of such documents; provided that in the case of the preceding clause (ii) no such Opinions of Counsel shall be required on the Issue Date to the extent such matters have been addressed to the reasonable satisfaction of the Trustee and Collateral Agent in the Bankruptcy Order;

(2) at the time of delivery thereof after the Issue Date, Opinions of Counsel substantially in the form of any Opinions of Counsel delivered after the Issue Date to the Collateral Agent relating to any of the Collateral or the Security Documents; and

(3) on or before the Issue Date, the Real Property Collateral Requirements.

(c) At any time and from time to time, the Company will, and will cause each of its Subsidiaries (other than any Excluded Non-Guarantor Subsidiaries) to, promptly execute, acknowledge and deliver such Security Documents, instruments, certificates, notices and other documents and take such other actions as shall be required or which the Collateral Agent may request to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred as contemplated by this Indenture for the benefit of the holders of the Secured Obligations.

(d) The Company and the Subsidiary Guarantors will at all times comply with the provisions of TIA §314(b).

(e) To the extent required, the Company will cause TIA §313(b), relating to reports, and TIA §314(d), relating to the release of property or securities or relating to the

substitution therefore of any property or securities to be subjected to the Lien of the Security Documents, to be complied with. Any certificate or opinion required by TIA §314(d) may be made by an Officer of the Company except in cases where TIA §314(d) requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected by or satisfactory to the Trustee. Notwithstanding anything to the contrary in this paragraph, the Company will not be required to comply with all or any portion of TIA §314(d) if it determines, in good faith based on advice of counsel, that under the terms of TIA §314(d) or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including “no action” letters or exemptive orders, all or any portion of TIA §314(d) is inapplicable to one or a series of released Collateral.

(f) To the extent required, the Company will furnish to the Trustee and the Collateral Agent, prior to each proposed release of Collateral pursuant to the Security Documents:

(1) all documents required by TIA §314(d); and

(2) an Opinion of Counsel to the effect that such accompanying documents constitute all documents required by TIA §314(d).

(g) If any Collateral is released in accordance with this Indenture or any Security Document and if the Company has delivered the certificates and documents required by the Security Documents and this Section 12.02, the Trustee will determine whether it has received all documentation required by TIA §314(d) in connection with such release and, based on such determination and the Opinion of Counsel delivered pursuant to this Indenture, will deliver a certificate to the Collateral Agent setting forth such determination.

SECTION 12.03 Collateral Agent.

(a) Wilmington Savings Fund Society, FSB will serve as the Collateral Agent for the benefit of the Holders of the Securities and other Secured Obligations from time to time.

(b) The Collateral Agent is authorized and empowered to appoint one or more co-Collateral Agents or sub-agents or bailees to hold Collateral or to take such other action as it deems necessary or appropriate.

(c) Neither the Trustee nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Collateral Agent’s Lien, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Collateral Agent’s Liens or Security Documents or any delay in doing so.

(d) The Collateral Agent will be subject to such directions as may be given it by the Trustee and by the Other Secured Notes Trustee from time to time as required or permitted by this Indenture and the Collateral Agency and Intercreditor Agreement. The relative rights with respect to control of the Collateral Agent will be specified in the Collateral Agency and

Intercreditor Agreement. Except as provided in the Collateral Agency and Intercreditor Agreement and otherwise, except as directed in writing by the Holders of a majority in principal amount of (x) the Securities and (y) the Other Secured Notes then outstanding, voting together as a single class, the Collateral Agent will not be obligated or permitted:

(1) to act upon directions purported to be delivered to it by any other Person; or

(2) to foreclose upon or otherwise enforce any Lien or other remedy at law or pursuant to any Security Document.

(e) The Collateral Agent is authorized to receive any funds for the benefit of the Holders distributed under the Security Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture and the Security Documents, as the case may be.

(f) The Collateral Agent will be accountable only for amounts that it actually receives as a result of the Collateral Agent's Lien or Security Documents.

(g) In acting as Collateral Agent or co-Collateral Agent, the Collateral Agent and each co-Collateral Agent may rely upon and enforce each and all of the rights, powers, immunities, indemnities and benefits as set forth in the Collateral Agency and Intercreditor Agreement.

(h) The Company will deliver to the Trustee copies of all Security Documents delivered to the Collateral Agent and copies of all documents delivered to the Collateral Agent pursuant to the Security Documents.

(i) The Collateral Agent shall have all the rights and protections provided in the Security Documents.

(j) The Collateral Agent shall have all of the rights, duties, liabilities and immunities specified as those of the Collateral Agent in this Indenture.

SECTION 12.04 Security Documents and Note Guarantees.

(a) Each Holder, by its acceptance of any Securities and Note Guarantees, hereby (i) authorizes the Trustee and the Collateral Agent, as applicable, on behalf of and for the benefit such Holder of Securities, to be the agent for and representative of such Holder with respect to the Note Guarantees, the Collateral and the Security Documents and (ii) irrevocably appoints the Collateral Agent to act as such Holder's agent and Collateral Agent under the Collateral Agency and Intercreditor Agreement.

(b) Each Holder, by its acceptance of any Securities and the Note Guarantees, (i) consents and agrees to the terms of the Security Documents, as the same may be in effect or may be amended from time to time in accordance with their terms; (ii) authorizes and directs each of the Collateral Agent and Trustee to enter into the Security Documents to which it is a party, authorizes and empowers the Trustee and the Collateral Agent to execute and deliver the Collateral

Agency and Intercreditor Agreement and authorizes and empowers the Trustee and the Collateral Agent to bind the Holders of Securities and other holders of the Secured Obligations as set forth in the Security Documents to which they are a party to perform its respective obligations and exercise its respective rights under the Security Documents in accordance therewith; and (iii) irrevocably authorizes the Collateral Agent to perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Collateral Agency and Intercreditor Agreement, together with any other incidental rights, power and discretions.

(c) Anything contained in any of this Indenture or the Security Documents to the contrary notwithstanding, each Holder hereby agrees that no Holder shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies of the Trustee hereunder may be exercised solely by the Trustee in accordance with the terms hereof and all powers, rights and remedies in respect of the Collateral under the Security Documents may be exercised solely by the Collateral Agent.

(d) Subject to the provisions of the Security Documents, the Trustee may, in its sole discretion and without the consent of the Holders, on behalf of the Holders, direct, on behalf of the Holders, the Collateral Agent to take all actions it deems necessary or appropriate in order to (i) enforce any of its rights or any of the rights of the Holders under the Security Documents and (ii) collect and receive any and all amounts payable in respect of the Collateral in respect of the obligations of the Company and the Guarantors hereunder and thereunder. Subject to the provisions of the Security Documents, the Trustee shall have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Security Documents or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interest and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders or the Trustee).

(e) Where Section 4.14 or any other provision of this Indenture or any Security Document requires that additional property or assets be added to the Collateral, the Company shall (x) cause a valid, enforceable, and perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien on or in such property or assets (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and (y) deliver to the Trustee and the Collateral Agent the documents required by Section 4.14 and the following:

- (1) a request from the Company that such Collateral be added;
- (2) [reserved];
- (3) an Officer's Certificate to the effect that the Collateral being added is in the form, consists of the assets and is in the amount or otherwise has the Fair Market Value required by this Indenture;

(4) an Officer's Certificate and Opinion of Counsel to the effect that all conditions precedent provided for in this Indenture to the addition of such Collateral have been complied with, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of the Collateral Agent's Lien on such Collateral and as to the due authorization, execution, delivery, validity and enforceability of the Security Document being entered into; and

(5) such financing statements or other filings or recording instruments, if any, as the Company shall deem necessary to perfect the Collateral Agent's Lien in such Collateral, except, solely in the case of personal property, to the extent such actions are not required pursuant to the applicable Security Document.

(f) Each of the Collateral Agent and the Trustee is authorized and empowered to receive for the benefit of the Holders of Securities any funds collected or distributed to the Collateral Agent or the Trustee under the Security Documents and, subject to the terms of the Security Documents, the Trustee is authorized and empowered to make further distributions of such funds to the Holders of Securities according to the provisions of this Indenture.

(g) Each Holder of Securities, by its acceptance thereof, authorizes and directs the Trustee and the Collateral Agent to enter into one or more amendments to the Collateral Agency and Intercreditor Agreement or enter into any additional intercreditor agreement or any amendments or supplements to the Security Documents in accordance with the provisions of this Indenture, the Collateral Agency and Intercreditor Agreement and the Security Documents.

SECTION 12.05 Release of Collateral Agent's Lien.

Subject to the conditions and provisions of the Security Documents, the Collateral Agent shall cause the Collateral to be released from the Collateral Agent's Lien with respect to the Secured Obligations:

(1) in whole, upon payment in full of the Securities, the Other Secured Notes and all other Secured Obligations that are outstanding, due and payable at the time the Securities and the Other Secured Notes are paid in full;

(2) with respect to the Notes Obligations only, upon satisfaction and discharge of this Indenture as set forth in Section 8.01(a);

(3) with respect to the Notes Obligations only, upon a legal defeasance or covenant defeasance as set forth in Section 8.01(b);

(4) with respect to the Notes Obligations only, upon payment in full of the Securities and all other Notes Obligations that are outstanding, due and payable at the time the Securities are paid in full;

(5) with respect to the Other Secured Notes Obligations only, upon (i) payment in full of the Other Secured Notes and all other Other Secured Notes Obligations that are outstanding, due and payable at the time the Other Secured Notes are paid in full, and in

connection therewith, the related indenture is satisfied and discharged or (ii) satisfaction and discharge of, or a legal defeasance or covenant defeasance under, the Other Secured Notes Indenture, in accordance with the terms thereof;

(6) as to any Collateral that constitutes all or substantially all of the Collateral, (i) with respect to the Notes Obligations only, with the consent of the Holders of at least 66-2/3% in principal amount of the Securities then outstanding or (ii) with respect to the Other Secured Notes Obligations only, with the consent of the Other Secured Noteholders of at least 66-2/3% in principal amount of the Other Secured Notes then outstanding under the Other Secured Notes Indenture (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Securities or the Other Secured Notes);

(7) subject to the provisions of the Collateral Agency and Intercreditor Agreement as to any Collateral which constitutes less than all or substantially all of the Collateral, with the consent of the holders of a majority in principal amount of (x) the Securities and (y) all Other Secured Notes issued under the Other Secured Notes Indenture then outstanding, voting together as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Securities); or

(8) as to any Collateral:

(i) that is (or is deemed to be) (A) sold or otherwise disposed of by the Company or any Subsidiary (to a Person other than the Company or any Subsidiary) in a Collateral Disposition permitted by the Other Secured Notes Indenture and this Indenture, at the time of such sale or disposition, to the extent of the interest sold or disposed of in accordance with the terms of this Indenture and so long as all Net Available Cash is deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien) and applied as required by this Indenture or (B) sold or otherwise disposed of by the Company or any Subsidiary (to a Person other than the Company or any Subsidiary) in a transaction that is deemed not to be an Asset Sale pursuant to, and that satisfies all terms and conditions specified in, clauses (B), (C), (D), (E), (G), (I), (M), (N), (O), or (P) of the definition of "Asset Sale" and that is otherwise permitted by the Other Secured Notes Indenture and this Indenture, at the time of such sale or disposition, to the extent of the interest sold or disposed of in accordance with the terms of this Indenture,

(ii) constituting Excluded Released Property of the type described in clause (1)(a), (2) or (3) of the definition of Excluded Released Property,

(iii) constituting Capital Stock in any Subsidiary that directly owns solely any Property set forth in Category 8 on Annex I hereto, which Capital Stock constitutes Property Collateral released upon the delivery of an Officers' Certificate to the Trustee attaching a Board Resolution,

(iv) that becomes Excluded Released Property of the type described in clause (4) of the definition of Excluded Released Property,

(v) that constitutes (A) Asset Sale Excess Proceeds that are not required to be applied to the repurchase of Securities or Other Secured Notes in accordance with Section 4.03 of this Indenture and the Other Secured Notes Indenture, (B) Pending Use Cash, upon the application of such Pending Use Cash for a Permitted Excess Cash Use in accordance with Section 4.03 of this Indenture and the Other Secured Notes Indenture, (C) Pending Use Cash, upon the application of such Pending Use Cash for the repurchase of Securities and Other Secured Notes in accordance with Section 4.03 of this Indenture and the Other Secured Notes Indenture, (D) Pending Redemption Cash, upon the application of such Pending Redemption Cash for the redemption or repurchase, as applicable, of Securities and Other Secured Notes in accordance with Section 4.04 of this Indenture and the Other Secured Notes Indenture, or (E) Issue Date Redemption Cash, upon application of such Issue Date Redemption Cash for redemption of Securities in accordance with Section 3.07(c) of this Indenture, or

(vi) that is owned or at any time acquired by a Guarantor that has been released from its Note Guarantee and its guarantee of the Other Secured Notes pursuant to Section 10.05 (other than clause (4) thereof), concurrently with the release thereof.

Subject to the terms of the Security Documents, the Company and the Guarantors will have the right to remain in possession and retain exclusive control of the Collateral securing the Secured Obligations (other than any cash, securities, obligations and Cash Equivalents constituting part of the Collateral that may be deposited with the Collateral Agent in accordance with the provisions of the Security Documents and other than as set forth in the Security Documents), to freely operate or otherwise use the Collateral and to collect, invest and dispose of any income therefrom unless an Actionable Event of Default (as defined in the Collateral Agency and Intercreditor Agreement) has occurred. Upon such an Actionable Event of Default, the Collateral Agent will be entitled to foreclose upon and sell the Collateral or any part thereof as provided in the Security Documents.

The release of any Collateral from the terms hereof and of the Security Documents or the release of, in whole or in part, the Liens created by the Security Documents, will not be deemed to impair the Lien on the Collateral in contravention of the provisions hereof if and to the extent the Collateral or Liens are released pursuant to the applicable Security Documents and pursuant to the terms of this Article 12. The Trustee and each of the Holders acknowledge that a release of Collateral or a Lien strictly in accordance with the terms of the Security Documents and of this

Article 12 will not be deemed for any purpose to be an impairment of the Lien and the Collateral in contravention of the terms of this Indenture.

SECTION 12.06 Collateral Agent to Sign Releases.

The Collateral Agent shall execute any release, quitclaim, termination, supplement or waiver authorized pursuant to and adopted in accordance with this Article 12 and the provisions of any applicable Security Document. The Collateral Agent shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel and an Officer's Certificate, copies of which shall also be provided to the Trustee and the Other Secured Notes Trustee, each stating that the execution of any release, quitclaim, termination, supplement or waiver authorized pursuant to this Article 12 is authorized or permitted by this Indenture and such Security Documents. For the avoidance of doubt, such Opinion of Counsel shall not be an expense of the Trustee or the Collateral Agent.

SECTION 12.07 Relative Rights.

The Security Documents define the relative rights, as lienholders, of holders of Secured Obligations. Nothing in this Indenture or the Security Documents shall:

(a) impair, as between the Company and any Guarantor, on the one hand, and Holders of Securities, on the other hand, the obligation of the Company, which is absolute and unconditional, to pay principal of, and premium and interest on any Security in accordance with its terms or the obligation of any Guarantor under its Note Guarantee or the obligation of the Company or any Guarantor to perform any other obligation of the Company or any Guarantor under this Indenture, the Securities, the Note Guarantees or the Security Documents;

(b) restrict the right of any Holder to sue for payments that are then due and owing, in a matter not inconsistent with the provisions of the Security Documents; or

(c) prevent the Trustee or any Holder from exercising against the Company or any Guarantor any of its other available remedies upon a Default or Event of Default (other than its rights as a secured party, which are subject to the Security Documents).

SECTION 12.08 Junior Lien Intercreditor Agreement.

If a Junior Lien Intercreditor Agreement is entered into, this Article 12 and the provisions of each other Security Document will be subject to the terms, conditions and benefits set forth in the Junior Lien Intercreditor Agreement. The Company and each Guarantor consents to, and agrees to be bound by, the terms of the Junior Lien Intercreditor Agreement, if any, as the same may be in effect from time to time, and to perform its obligations thereunder in accordance with the terms thereof. Each Holder, by its acceptance of the Notes (a) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Junior Lien Intercreditor Agreement and (b) authorizes and instructs the Collateral Agent on behalf of each Holder to enter into the Junior Lien Intercreditor Agreement as ["Priority Lien Representative" (as such term is defined in the Junior Lien Intercreditor Agreement)] on behalf of such Holders as ["Priority Lien Secured Parties" (as such term is defined in the Junior Lien Intercreditor Agreement)]. In addition, each Holder

authorizes and instructs the Collateral Agent to enter into any amendments or joinders to the Junior Lien Intercreditor Agreement in accordance with its terms with the consent of the parties thereto or otherwise in accordance with its terms, without the consent of any Holder or the Trustee, to add additional Indebtedness as Junior Lien Debt and add other parties (or any authorized agent or trustee therefor) holding such Indebtedness thereto and to establish that the Lien on any Collateral securing such additional Indebtedness shall rank junior to the Liens on such Collateral securing the Secured Obligations and rank equally with the Liens on such Collateral securing the Junior Lien Debt then outstanding to the extent permitted by this Indenture and the Security Documents. The Trustee and the Collateral Agent shall be entitled to rely upon an Officer's Certificate or an Opinion of Counsel certifying that any such amendment is authorized or permitted under the Note Documents.

ARTICLE 13 LIMITED GUARANTEE

SECTION 13.01 Limited Guarantee Agreement.

(a) The REIT by its execution of this Indenture hereby agrees with each Holder of a Security authenticated and delivered by the Trustee, and with the Trustee on behalf of such Holder as set forth in this Article 13:

(b) The REIT, in accordance with the terms hereof, as primary obligor and not merely as a surety, irrespective of the validity and the legal effects of the Securities, irrespective of restrictions of any kind on the performance by each of (i) the New Bank Claim Borrower, (ii) the Company, (iii) the Operating Partnership and (iv) the Subsidiary Guarantors of their respective obligations under the Securities, and waiving all rights of objection and defense arising from the Securities, but subject to the limitations set forth below, hereby guarantees to the Holders (a) the aggregate principal balance of, and all accrued and unpaid interest on, the Securities and (b) all other indebtedness, liabilities, obligations, covenants and duties of the Company owing to the Holders of every kind, nature and description, under or in respect of the Indenture or the Securities or the other Note Documents, for losses solely suffered by reason of fraud or willful misrepresentation by the New Bank Claim Borrower, the Company, the Operating Partnership, the Subsidiary Guarantors and each of their respective affiliates or the REIT (and for no other reason). Any diligence, presentment, demand, protest or notice, whether in relation to the REIT, the Company, or any other person, from a Holder, in respect of any of the REIT's obligations under the Limited Guarantee is hereby waived.

(c) The obligations of the REIT under this Article 13 constitute unsecured and unsubordinated obligations of the REIT and the REIT undertakes that its obligations hereunder will rank equally in right of payment with all other unsecured and unsubordinated obligations of the REIT.

(d) Subject to the limitations set forth above, the Limited Guarantee is a guarantee of payment and not merely of collection and it shall continue in full force and effect by way of continuing security until all principal, premium and interest (including any additional amounts required to be paid in accordance with the terms and conditions of the Securities) have been paid in full and all other actual or contingent obligations of the Company in relation to the

Securities or under the Indenture have been satisfied in full. Notwithstanding the foregoing, if any payment received by any Holder is, on the subsequent bankruptcy or insolvency of the Company or the Subsidiary Guarantors, avoided under any applicable laws, including, among others, laws relating to bankruptcy or insolvency, such payment will not be considered as having discharged or diminished the liability of the REIT and the Limited Guarantee will continue to apply as if such payment had at all times remained owing by the Company.

(e) Until all principal, premium (if any) and interest and all other monies payable by the Company in respect of any Securities shall be paid in full, (i) no right of the REIT, by reason of the performance of any of its obligations under this Article 13, to be indemnified by the Company or to take the benefit of or enforce any security or other guarantee or indemnity against the Company in connection with the Securities shall be exercised or enforced and (ii) the REIT shall not (a) by virtue of this Article 13 or any other reason be subrogated to any rights of any Holder or (b) claim in competition with the Holders against the Company. If the REIT receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Holders by the Company under or in connection with the Securities to be paid in full on behalf and for the benefit of the Holders and shall promptly pay or transfer the same to the Holders as they may direct to the extent such amount shall be due and unpaid by the Company to the Holders.

SECTION 13.02 Release of Limited Guarantee.

The REIT's Limited Guarantee shall be released if the Company exercises its legal defeasance option under Section 8.01(b)(1) hereof or its covenant defeasance option under Section 8.01(b)(2) or if the Company's obligations under the Indenture are discharged pursuant to 8.01(a) hereof. At the written instruction of the Company, the Trustee shall execute and deliver any documents, instructions or instruments evidencing any such release.

SECTION 13.03 Limitation of Limited Guarantee.

Notwithstanding any provision of the Limited Guarantee, any such guarantee by the REIT is hereby limited to the extent, if any, required so that its obligations under such guarantee shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

SECTION 13.04 Limited Guarantee Evidenced by Indenture; No Notation of Limited Guarantee. The Limited Guarantee of the REIT shall be evidenced solely by its execution and delivery of this Indenture and not by an endorsement on, or attachment to, any Security of the Limited Guarantee or notation thereof.

The REIT hereby agrees that the Limited Guarantee set forth in Article 13 hereof shall be and remain in full force and effect notwithstanding any failure to endorse on any Security a notation of the Limited Guarantee.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Limited Guarantee set forth in this Indenture on behalf of the REIT.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

CBL & ASSOCIATES HOLDCO II, LLC, as the Company

By: _____
Name:
Title:

CBL & ASSOCIATES PROPERTIES, INC., as the REIT

By: _____
Name:
Title:

GUARANTORS:

[To come.]

TRUSTEE AND COLLATERAL AGENT:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as the Trustee and
Collateral Agent

By: _____
Name:
Title:

[Signature Page to Indenture]

Collateral and Credit Support for Securities**Category 1–****Certain Mall Assets**

- Brookfield Square
- Dakota Square
- Eastland Mall (including (Parcel(s) in Main Project))
- Harford Mall
- Laurel Park Place
- Meridian Mall (leasehold)
- Mid Rivers Mall
- Monroeville Mall and Annex
- Monroeville Mall - Anchor
- Monroeville Mall - District
- Northpark Mall
- Old Hickory Mall
- Parkway Place
- South County Center
- St. Clair Square (fee)
- St. Clair Square (leasehold)
- Stroud Mall (leasehold)
- Stroud Mall (fee)
- York Galleria

Certain Associated Centers & Other Properties

- 840 Greenbrier Circle

Category 2

None.

Category 3 –

- Alamance Crossing – West
- Brookfield Square – Bluemound Road parcel (fee)/Lifestyle Center
- Brookfield Square – Bluemound Road parcels (leasehold)/Lifestyle Center
- Brookfield Square – Moreland Road Outparcels²

² Brookfield Square – Mooreland Road Outparcels. These parcels are not currently subdivided from the mall tract. Upon completion of the subdivision, these outparcels will be released from Brookfield Square in Category 1 (including a release from any mortgage or pledge related thereto) and placed in Category 3.

- CoolSprings Crossing
- CoolSprings Crossing – Parcel(s) in the Main Project
- Cross Creek – Sears - Parcel(s) in the Main Project
- Courtyard at Hickory Hollow
- Cross Creek Mall – Sears
- Dakota Square - Parcel(s) in the Main Project
- Dakota Square – Mgmt GL Parcels
- East Towne Mall – Outparcel
- East Towne Mall – Parcel
- Eastgate Mall – Sears
- Eastgate Mall – Shops at Eastgate
- Eastland Mall – Macy’s
- Fayette Mall – Parcel(s) in the Main Project³
- Frontier Square
- Gunbarrel Pointe
- Hamilton Place – Sears
- Hamilton Place – Sears – Parcel(s) in the Main Project
- Hanes Mall – Restaurants
- Harford Mall – Annex
- Jefferson Mall – Macy’s / Round 1
- Jefferson Mall – Sears
- Jefferson Mall – Self Development
- Kirkwood Mall – Mgmt GL Parcels
- Laurel Park Mall – Parcel(s) in the Main Project
- Layton Hills Mall – Mgmt GL Parcels
- Layton Hills Mall – Outparcel II
- Mall del Norte TX Outparcel
- Mayfaire Town Center – Mgmt GL Parcels
- Meridian Mall – Parcel(s) in the Main Project (leasehold)
- Meridian Mall – Parcel(s) in the Main Project (fee)
- Mid Rivers Mall – Parcel(s) in the Main Project
- Monroeville Mall - Parcel(s) in the Main Project
- Northgate Mall – Outparcel
- Northgate Mall Sears TBA – Outparcels
- Northpark Mall – Parcel(s) in the Main Project
- Northpark Mall – Mgmt GL Parcels
- Parkdale Mall – Corner (Self Dev. Tract 4/Pad B)
- Parkdale Mall - Macy's
- Parkdale Mall – Mgmt GL Parcels
- Pearland Town Center – Mgmt GL Parcels

³ Fayette Mall – Parcel(s) in the Main Project is currently encumbered, but the parties hereto agree that upon such property’s release (which is expected to occur in connection with the extension and modification of the existing loan secured by Fayette Mall), such property shall be included in Category 3.

- Pearland Town Center – Self Development (Parcel 8)
- Post Oak Mall – Mgmt GL Parcels
- Shoppes @ St. Clair
- South County Center – Parcel(s) in the Main Project
- South County Center – Mgmt GL Parcels
- Southaven Towne Center – Parcel(s) in the Main Project
- Southpark Mall – Dick’s Sporting Goods
- St. Clair Square – Parcel(s) in the Main Project
- Sunrise Commons
- The Landing at Arbor Place
- The Landing at Arbor Place – Parcel(s) in the Main Project
- The Plaza at Fayette (including Parcel(s) in Main Project and Johnny Carino’s Redevelopment)
- Valley View Mall – Parcel(s) in the Main Project
- Volusia Mall – Restaurant Village
- Volusia Mall – Sears TBA
- WestGate Crossing
- West Towne Crossing
- West Towne Crossing – Parcel(s) in the Main Project
- West Towne Mall – Restaurant District
- York Galleria – Parcel(s) in the Main Project

Category 4 –

Joint Venture Properties

Malls

- Coastal Grand Mall and District
 - Coastal Grand Mall – Dick’s Sporting Goods
 - Coastal Grand OP (fee)
 - Coastal Grand OP (leasehold)
 - CoolSprings Galleria
 - CoolSprings Macy’s Outparcel (leasehold)
 - Friendly Shopping Center
 - Friendly Center – Belk Homestore
 - Governor’s Square
 - Kentucky Oaks
 - Northgate Mall – JCP
 - Northgate Mall – Sears
 - Oak Park Mall
 - Outlet Shoppes at Atlanta – Tract 1A
 - Outlet Shoppes at Atlanta – Tract 1A1
 - Outlet Shoppes at Atlanta – Outparcel
-

- Outlet Shoppes at Atlanta – Tract 1B and others
- Outlet Shoppes at El Paso – OP
- Outlet Shoppes at El Paso – OP II
- Outlet Shoppes at El Paso – Phase I and Phase II
- Outlet Shoppes at El Paso – .2763 Acre Tract
- Outlet Shoppes at Gettysburg – Phase I
- Outlet Shoppes at Gettysburg – Phase II
- Outlet Shoppes at Laredo
- Outlet Shoppes of the Bluegrass
- Outlet Shoppes of the Bluegrass – Phase II
- Outlet Shoppes of the Bluegrass – OP Tract 11
- Outlet Shoppes of the Bluegrass – OP Tract 8
- Shops at Friendly Center – Phase I and II
- West County Center

Associated Centers

- Coastal Grand Outparcel – Fee Outparcels
- Governor’s Square Plaza
- York Town Center
- York Town Center – Former Pier 1

Community Centers

- Ambassador Town Center
- Fremaux Town Center Phase I and II
- Hammock Landing – Phase I
- Hammock Landing – Phase II
- Pavilion at Port Orange – Phase I
- Promenade at D’Iberville
- Shoppes at Eagle Point

Storage

- Eastgate Mall – Self Storage
- Hamilton Place – Self Storage
- Mid Rivers – Self Storage
- Parkdale Mall – Self Storage

Other

- Hamilton Corner – AAA Parcel
 - Hamilton Place – ALOFT Hotel
 - Statesboro – Land
 - Pavilion at Port Orange West JV – Apts
-

Other Encumbered Properties

- Alamance Crossing – East
- Arbor Place Main Mall (Arbor Place II, LLC)
- Asheville Mall⁴
- Brookfield Square – Sears and Street Shops
- Cross Creek Mall
- Eastgate Mall⁵
- Fayette Mall and Fayette Mall – Sears Renovation⁶
- Greenbriar Mall⁷
- Jefferson Mall
- Northwoods Mall
- Park Plaza Mall⁸
- Parkdale Mall
- Parkdale Crossing (including Lifeway Christian Redevelopment)
- Southpark Mall
- Volusia Mall
- Westgate Mall

Category 5

None.

Category 6

None.

Category 7 –

- CBL Center – Phase I and II
- Hamilton Corner
- Hamilton Crossing and Expansion

⁴ The parties hereto agree that any interest in Asheville Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

⁵ The parties hereto agree that any interest in Eastgate Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

⁶ Fayette Mall – Sears Renovation is not encumbered as of the Effective Date, but the parties hereto agree that such property shall be added as collateral to the existing encumbrance as part of the upcoming extension and modification of the existing loan.

⁷ The parties hereto agree that any interest in Greenbier Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

⁸ The parties hereto agree that any interest in Park Plaza Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

- Hamilton Place – Regal Cinema
- Hamilton Place – Lebcon (Land)
- Hamilton Place Mall and OP
- The Shoppes at Hamilton Place
- The Terrace

Category 8 –

- Alamance Crossing, LLC
 - Alamance Crossing - OP
 - Arbor Place - APWM, LLC
 - Arbor Place - OP
 - CBL/Cherryvale I, LLC - vacant property
 - Cross Creek – Sears - Parcel(s) in the Main Project (vacant lot 2)
 - Dakota Square OP
 - Eastgate Mall – Self-Development
 - Hanes Mall – Lot 2A
 - Gulf Coast Galleria (D'Iberville CBL Land, LLC)
 - Gulf Coast Town Center - Peripheral IV - Land
 - Gulf Coast Town Center - Phase III - Land
 - Hickory Point Mall - OP
 - Imperial Valley Commons - Kohl's and Land
 - Imperial Valley Mall - OP
 - Jacksonville Regal Cinema Mgmt
 - Meridian Mall - Land E. Lansing (leasehold interest)
 - Meridian Mall - Township Property (leasehold interest)
 - Meridian Mall – Management Fee Parcel
 - Mid Rivers Land LLC (vacant parcels)
 - Northpark Mall/Joplin, LLC Hollywood Parcels
 - Pavilion at Port Orange – Phase II
 - Pearland Town Center – Outparcel TX Land LLC
 - Southaven Towne Center vacant parcels
 - The Landing at Arbor Place - OP
 -
-

Release Prices Schedule

<u>Property</u>	<u>Release Price (\$ in millions)</u>
Brookfield Square	[19.0
Dakota Square	26.0
Eastland Mall (incl. Parcel(s) in Main Project)	5.0
Harford Mall	18.0
Laurel Park Place	9.0
Meridian Mall (leasehold)	13.0
Mid Rivers Mall	22.1
Monroeville Mall and Annex	18.7
Monroeville Mall – Anchor	4.7
Monroeville Mall – District	3.3
Northpark Mall	24.6
Old Hickory Mall	6.0
Parkway Place	42.0
South County Center	32.2
St. Clair Square (fee and leasehold)	60.0
Stroud Mall (fee and leasehold)	6.0
York Galleria	10.0
840 Greenbrier Circle	4.5]

PROVISIONS RELATING TO SECURITIES**1. Definitions****1.1 Definitions**

Capitalized terms used in this Appendix and not otherwise defined shall have the meanings provided in the Indenture. For the purposes of this Appendix and the Indenture as a whole, the following terms shall have the meanings indicated below:

“Definitive Security” means a certificated Security that does not include the Global Securities Legend.

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Global Securities” has the meaning set forth in Section 2.1 hereof.

“Global Securities Legend” means the legend set forth under that caption in Exhibit A to the Indenture.

“Securities Custodian” means the custodian with respect to a Global Security (as appointed by the Depository) or any successor Person thereto and shall initially be the Trustee.

1.2 Other DefinitionsTerm:

“Agent Members”

“Global Security”

Defined in Section:

2.1(c)

2.1(b)

2. The Securities**2.1 Form and Dating**

The Securities shall be issued in the form of one or more global notes (a “*Global Security*” and are collectively referred to herein as “*Global Securities*”). The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee and on the schedules thereto as hereinafter provided.

The Company shall execute and the Trustee shall, pursuant to an order of the Company signed by two Officers, authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of the Depository for such Global Security or Global Securities or the nominee of such Depository and (ii) shall be delivered by the Trustee to such Depository or pursuant to such Depository’s instructions or held by the Trustee as Securities Custodian.

Members of, or participants in, the Depository (“*Agent Members*”) shall have no rights under the Indenture with respect to any Global Security held on their behalf by the Depository or

by the Trustee as Securities Custodian or under such Global Security, and the Company, the Trustee and any agent of the Company or the Trustee shall be entitled to treat the Depository as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Security.

Except as provided in Section 2.3 or 2.4, owners of beneficial interests in Global Securities shall not be entitled to receive physical delivery of certificated Securities.

2.2 Authentication. The Trustee shall authenticate and deliver on the Issue Date, an aggregate principal amount of \$455,000,000 of 10% Senior Secured Notes due 2029. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated.

2.3 Transfer and Exchange.

(a) Transfer and Exchange of Definitive Securities. When Definitive Securities are presented to the Registrar with a request:

(A) to register the transfer of such Definitive Securities; or

(B) to exchange such Definitive Securities for an equal principal amount of Definitive Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Definitive Securities surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing.

(b) Restrictions on Transfer of a Definitive Security for a Beneficial Interest in a Global Security. A Definitive Security may not be exchanged for a beneficial interest in a Global Security except upon satisfaction of the requirements set forth below. Upon receipt by the Registrar of a Definitive Security, duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, together with written instructions directing the Trustee to make, or to direct the Securities Custodian to make, an adjustment on its books and records with respect to such Global Security to reflect an increase in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depository account to be credited with such increase, then the Trustee shall cancel such Definitive Security and cause, or direct the Securities Custodian to cause, in accordance with the standing instructions and procedures existing between the Depository and the Securities Custodian, the aggregate principal amount of Securities represented by the Global Security to be

increased by the aggregate principal amount of the Definitive Security to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Definitive Security so cancelled. If no Global Securities are then outstanding and the Global Security has not been previously exchanged for certificated Securities pursuant to Section 2.4, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officer's Certificate, a new Global Security in the appropriate principal amount.

- (c) Transfer and Exchange of Global Securities. (i) The transfer and exchange of Global Securities or beneficial interests therein shall be effected through the Depository, in accordance with the Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depository therefor. A transferor of a beneficial interest in a Global Security shall deliver to the Registrar a written order given in accordance with the Applicable Procedures containing information regarding the participant account of the Depository to be credited with a beneficial interest in such Global Security. The Registrar shall, in accordance with such instructions, instruct the Depository to credit to the account of the Person specified in such instructions a beneficial interest in the applicable Global Security and to debit the account of the Person making the transfer the beneficial interest in the Global Security being transferred.
- (ii) If the proposed transfer is a transfer of a beneficial interest in one Global Security to a beneficial interest in another Global Security, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Security to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Security from which such interest is being transferred.
- (iii) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4), a Global Security may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.
- (d) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a Global Security have either been exchanged for Definitive Securities, redeemed, purchased or cancelled, such Global Security shall be returned to the Depository for cancellation or retained and cancelled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for Definitive Securities, transferred in exchange for an interest in another Global Security, redeemed, purchased or cancelled, the principal amount of Securities represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the

Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction, and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security will be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(e) Obligations with Respect to Transfers and Exchanges of Securities

- (i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate, Definitive Securities and Global Securities at the Registrar's request.
- (ii) No service charge shall be made for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges not involving any transfer pursuant to Sections 2.06, 2.07, 2.09, 3.06, 4.03 and 9.05 of the Indenture or pursuant to Section 2.3 or 2.4 of this Appendix).
- (iii) Prior to the due presentation for registration of transfer of any Security, the Company, the Trustee, the Paying Agent or the Registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Company, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.
- (iv) All Securities issued upon any transfer or exchange pursuant to the terms of the Indenture shall evidence the same debt and shall be entitled to the same benefits under the Indenture as the Securities surrendered upon such transfer or exchange.

(f) No Obligation of the Trustee

- (i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or any other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any

amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

- (ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

2.4 Definitive Securities. (a) A Global Security deposited with the Depository or with the Trustee as Securities Custodian for the Depository pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of Definitive Securities in an aggregate principal amount equal to the principal amount of such Global Security, in exchange for such Global Security, only if such transfer complies with Section 2.3 hereof and (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security and the Depository fails to appoint a successor depository or if at any time such Depository ceases to be a “clearing agency” registered under the Exchange Act, and, in either case, a successor depository is not appointed by the Company within 90 days of such notice, or (ii) an Event of Default has occurred and is continuing or (iii) the Company, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of certificated Securities under the Indenture.

- (b) Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section 2.4 shall be surrendered by the Depository to the Trustee located at its principal corporate trust office to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section 2.4 shall be executed, authenticated and delivered only in minimum denominations of \$1.00 principal amount and any integral multiple thereof and registered in such names as the Depository shall direct.

- (c) Subject to the provisions of Section 2.4(b) hereof, the registered Holder of a Global Security shall be entitled to grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under the Indenture or the Securities.

- (d) In the event of the occurrence of any of the events specified in Section 2.4(a)(i), (ii) or (iii) hereof, the Company shall promptly make available to the Trustee a reasonable supply of Definitive Securities in definitive, fully registered form without interest coupons. In the event that such Definitive Securities are not issued, the Company expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 6.06 or Section 6.07 of the Indenture, the right of any beneficial owner of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial owner's Securities as if such Definitive Securities had been issued.

[FORM OF FACE OF SECURITY]

[Global Securities Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

No.
CUSIP No. 12511C AA8
ISIN US12511CAA80

\$

10% Senior Secured Notes due 2029

CBL & Associates HoldCo II, LLC, a Delaware limited liability company, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of _____ Dollars [as may be increased or decreased as set forth on the attached Schedule of Increases or Decreases in Global Security] on [November 15], 2029.

Interest Payment Dates: [May 15] and [November 15].

Record Dates: [May 1] and [November 1].

Additional provisions of this Security are set forth on the other side of this Security.

Dated:

CBL & ASSOCIATES HOLDCO II, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON SAVINGS FUND SOCIETY, FSB

as Trustee, certifies that this is one of the Securities referred to in the Indenture.

By: _____
Authorized Signature

[FORM OF REVERSE SIDE OF SECURITY]

10% Senior Secured Notes due 2029

1. Interest

CBL & Associates HoldCo II, LLC, a Delaware limited liability company (such company, and its successors and assigns under the Indenture hereinafter referred to, being herein called the “*Company*”) promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company shall pay interest semiannually in arrears on [May 15] and [November 15] of each year, commencing [May 15], 2022. Interest on the Securities shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from [November 1], 2021. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay interest on overdue principal at the rate borne by this Security, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

Interest on the Securities will accrue at the annual rate set forth above and will be payable solely in cash. Interest payable at Stated Maturity, upon redemption or repurchase of the Securities shall be payable in cash.

2. Method of Payment

The Company shall pay interest on the Securities (except defaulted interest) to the Persons who are registered holders of Securities at the close of business on the [May 1] or [November 1] (whether or not a Legal Holiday) next preceding the Interest Payment Date even if Securities are cancelled after the record date and on or before the Interest Payment Date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal, premium and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. Payments in respect of the Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by the Depository. The Company will make all payments in respect of a certificated Security (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; provided, however, that payments on a certificated Security will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, Wilmington Savings Fund Society, FSB, a national banking association (the “*Trustee*”), will act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Company or any

of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Company originally issued the Securities under the Indenture dated as of [November 1], 2021 (the “*Indenture*”), among the Company, the REIT, the Guarantors named therein and the Trustee and Collateral Agent. The terms of the Securities include those stated in the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. To the extent any provision of any Security conflicts with the express provisions of the Indenture, the provisions of this Indenture shall govern and be controlling. The Securities are subject to all such terms, and Securityholders are referred to the Indenture. The Securities are entitled to the benefits of the Security Documents, subject to the terms of the Note Documents, including the Collateral Agency and Intercreditor Agreement.

The Indenture contains covenants that, among other things, limit the ability of the Company and its subsidiaries to Incur additional indebtedness; engage in transactions with affiliates; create liens on assets; transfer or sell assets; guarantee indebtedness; and consolidate, merge or transfer all or substantially all of its assets and the assets of its subsidiaries. These covenants are subject to important exceptions and qualifications.

5. Redemption

The Company shall be required to mandatorily redeem the Securities (a) on [November 8], 2021 as provided in Section 3.07(c) of the Indenture and subject to the terms of Article 3 of the Indenture and (b) upon a Release Trigger Event as provided in, and subject to the terms of, the Indenture. Except as set forth under Section 4.03 of the Indenture, the Company shall not be required to repurchase the Securities at the option of the Holders.

Except as set forth below, the Company shall not be entitled to redeem or otherwise prepay the Securities at the Company’s option at any time.

At any time prior to [May 15], 2023, the Company shall be entitled at its option to redeem all or a portion of the Securities upon not less than 10 nor more than 60 days’ notice, at a redemption price equal to (i) 100% of the principal amount of the Securities redeemed, plus (ii) accrued and unpaid interest to but excluding the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date).

On and after [May 15], 2023, the Company shall be entitled at its option to redeem all or a portion of the Securities upon required notice provided in accordance with paragraph 6 below, at the redemption prices set forth below (expressed in percentages of principal amount on the redemption date), plus accrued and unpaid interest to but excluding the redemption date (subject

to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date), if redeemed during any of the periods set forth below:

Period	Redemption Price
[May 15], 2023 to [May 14], 2024	105.0%
[May 15], 2024 to [May 14], 2025	102.5%
[May 15], 2025 and thereafter	100.0%

6. Notice of Redemption

The Company shall send a notice of optional redemption pursuant to paragraph 5 to each Holder whose Securities are to be redeemed at such Holder's registered address (x) on the Issue Date in the form of the Issue Date Redemption Notice in the case of the Issue Date Redemption pursuant to Section 3.07(c) hereof or (y) at least (i) 10 days but not more than 60 days before a date for redemption of Securities pursuant to Section 3.08 of the Indenture or (ii) 30 days but not more than 60 days before a date for redemption of Securities pursuant to Section 4.04 of the Indenture. If money sufficient to pay the redemption price of and accrued interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

7. Asset Sale Offer

Upon certain Asset Sales, any Holder of Securities will have the right to cause the Company to repurchase all or any part of the Securities of such Holder at a repurchase price payable in cash as provided in, and subject to the terms of, the Indenture.

8. Guarantees; Security

The payment by the Company of the principal of, and premium and interest on, the Securities is fully and unconditionally guaranteed on a joint and several senior basis by each of the Guarantors to the extent set forth in the Indenture. The Securities and Note Guarantees will be secured on a first-priority basis (subject only to Permitted Collateral Liens), on an equal and ratable basis with the holders of the Other Secured Notes Obligations, by the Collateral as provided in the Indenture and the Security Documents.

9. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in minimum denominations of \$1.00 principal amount and integral multiples of \$1.00. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the

portion of the Security not to be redeemed) or any Securities for a period of 15 days before a selection of Securities to be redeemed or 15 days before an Interest Payment Date.

10. Security Documents; Junior Lien Intercreditor Agreement

Each Securityholder, by accepting a Security, shall be deemed to have agreed to and accepted the terms and conditions of the Security Documents (including the Collateral Agency and Intercreditor Agreement) and the Junior Lien Intercreditor Agreement, if any, and the performance by the Trustee and the Collateral Agent of their respective obligations and the exercise of their respective rights thereunder and in connection therewith.

11. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

12. Unclaimed Money

If money for the payment of principal or interest, if any, remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

13. Discharge and Defeasance

Subject to certain conditions provided in the Indenture, the Company at any time shall be entitled to terminate some or all of its obligations under the Securities and the Indenture and to the release of liens on the Collateral if the Company deposits with the Trustee cash in U.S. dollars, U.S. Government Obligations or a combination thereof for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

14. Amendment; Waiver

The Indenture, the Security Documents or the Securities may be amended or supplemented, and any existing Default or Event of Default or compliance with any provision of the Indenture, the Security Documents or the Securities may be waived as provided in the Indenture.

Subject to certain exceptions set forth in the Indenture, the Company, the Guarantors, the Trustee and the Collateral Agent, if applicable, may amend any of the Indenture, the Securities or the other Note Documents without notice to or consent of any Securityholder to, among other things, (a) cure any ambiguity, omission, mistake, defect or inconsistency, (b) to add or release Guarantees with respect to the Securities, including any Note Guarantees, in each case in compliance with the Note Documents, (c) comply with any requirements of the SEC in connection with qualifying the Indenture under the TIA, (d) make, complete or confirm any grant of Collateral permitted or required by any of the Note Documents, and (e) to release or subordinate Liens on Collateral in accordance with the Note Documents.

Section 316(a) of the Trust Indenture Act is expressly excluded from the Indenture and the other Note Documents for all purposes. In determining whether the Holders of the required

principal amount of Securities have concurred in any direction, waiver, consent, approval or other action of Holders, Securities owned by the Company, any Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Guarantor shall be disregarded and deemed not to be outstanding, except that Securities owned by Specified Holders (as defined in the Indenture) shall not be so disregarded.

15. Defaults and Remedies

The Events of Default relating to the Securities are set forth in the Indenture. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is in the interest of the Holders.

16. Trustee Dealings with the Company

Subject to certain limitations imposed by the TIA, each of the Trustee and the Collateral Agent under the Indenture, in its individual or any other capacity (including its capacity as Collateral Agent under the Indenture), may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee or Collateral Agent, as the case may be.

17. No Recourse Against Others

A director, officer, employee, incorporator or stockholder, as such, of the Company or any Guarantor shall not have any liability for any obligations of the Company under the Securities, the Note Guarantees, the Indenture or any other Note Document or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such claims and liability. The waiver and release are part of the consideration for the issue of the Securities.

18. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Security.

19. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

20. CUSIP Numbers

The Company has caused CUSIP and ISIN numbers to be printed on the Securities and has directed the Trustee to use such numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

21. Governing Law

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THIS NOTE AND THE NOTE DOCUMENTS WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Security in larger type. Requests may be made to:

CBL & Associates HoldCo II, LLC
2030 Hamilton Place Blvd., Suite 500,
Chattanooga, Tennessee 37421-6000
Attention: [Chief Financial Officer]

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Sign exactly as your name appears on the other side of this Security.

Signature

Signature Guarantee:

Signature must be guaranteed

Signature

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, *STAMP*, all in accordance with the Securities Exchange Act of 1934, as amended.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 4.03 of the Indenture, check the box:

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 4.03 of the Indenture, state the amount in principal amount (integral multiples of \$1.00): \$

Dated: _____ Your Signature: _____
(Sign exactly as your name appears
on the other side of this Security.)

Signature Guarantee: _____
(Signature must be guaranteed)

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“*STAMP*”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, *STAMP*, all in accordance with the Securities Exchange Act of 1934, as amended.

FORM OF GUARANTY SUPPLEMENTAL INDENTURE

[] SUPPLEMENTAL INDENTURE (this “*Supplemental Indenture*”), dated as of [•], 2021, among [Name of Future Guarantor(s)] (together with its successors and assigns under the Indenture, the “*New Guarantor*”), a subsidiary of CBL & Associates HoldCo II, LLC, a Delaware limited liability company (together with its successors and assigns under the Indenture, the “*Company*”), CBL & Associates Properties, Inc., a Delaware corporation (together with its successors and assigns under the Indenture, the “*REIT*”), the existing Guarantors (as defined in the Indenture referred to herein), the Company and Wilmington Savings Fund Society, FSB, as trustee under the Indenture referred to herein (in such capacity, together with its successors and assigns under the Indenture, the “*Trustee*”) and the collateral agent under the Indenture referred to herein (in such capacity, together with its successors and assigns under the Indenture, the “*Collateral Agent*”). The New Guarantor and the existing Guarantors are sometimes referred to collectively herein as the “*Guarantors*,” or individually as a “*Guarantor*.”

WITNESETH

WHEREAS, the Company, the REIT and the existing Guarantors have heretofore executed and delivered to the Trustee and the Collateral Agent an indenture (the “*Indenture*”), dated as of [•], 2021, relating to the 10% Senior Secured Notes due 2029 (the “*Securities*”) of the Company;

WHEREAS, Section 4.07 of the Indenture in certain circumstances requires the Company to cause a Subsidiary that is not then a Guarantor (i) to become a Guarantor by executing a supplemental indenture and (ii) to deliver an Opinion of Counsel to the Trustee as provided in such Section; and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Company, the REIT, the Guarantors, the Trustee and the Collateral Agent are authorized to execute and deliver this Supplemental Indenture to amend or supplement the Indenture without the consent of any Holder;

NOW THEREFORE, to comply with the provisions of the Indenture and in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the other Guarantors, the Company, the REIT and the Trustee and the Collateral Agent mutually covenant and agree for the equal and ratable benefit of the Holders of the Securities as follows:

1. **CAPITALIZED TERMS.** Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. **AGREEMENT TO GUARANTEE.** The New Guarantor hereby agrees, jointly and severally, with all other Guarantors, to unconditionally Guarantee to each Holder and to the Trustee and the Collateral Agent the Notes Obligations, to the extent set forth in the Indenture and subject to the provisions in the Indenture. The obligations of the Guarantors to the Holders of Securities and to the Trustee and the Collateral Agent pursuant to the Note Guarantees and the Indenture are

expressly set forth in Article 10 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantees.

3. EXECUTION AND DELIVERY. The New Guarantor agrees that its Note Guarantee shall remain in full force and effect notwithstanding any failure to endorse on each Security a notation of such Note Guarantee.

4. NEW YORK LAW TO GOVERN. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE AND ENFORCE THIS SUPPLEMENTAL INDENTURE.

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Supplemental Indenture may be executed in multiple counterparts which, when taken together, shall constitute one instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE AND THE COLLATERAL AGENT. Except as otherwise expressly provided herein, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee or Collateral Agent by reason of this Supplemental Indenture. This Supplemental Indenture is executed and accepted by the Trustee and the Collateral Agent subject to all the terms and conditions set forth in the Indenture with the same force and effect as if those terms and conditions were repeated at length herein and made applicable to the Trustee and the Collateral Agent with respect hereto. Neither the Trustee nor the Collateral Agent make any representation or warranty as to the validity or sufficiency of this Supplemental Indenture or with respect to the recitals contained herein, all of which recitals are made solely by the other parties hereto.

8. RATIFICATION OF INDENTURE; SUPPLEMENTAL INDENTURES PART OF INDENTURE. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Securities heretofore or hereafter authenticated and delivered shall be bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____, 20____.

[NEW GUARANTOR]

By: _____
Name:
Title:

[OTHER GUARANTORS]

By: _____
Name:
Title:

CBL & ASSOCIATES HOLDCO II, LLC, as the Company

By: _____
Name:
Title:

CBL & ASSOCIATES PROPERTIES, INC., as the REIT

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee and Collateral Agent

By: _____
Name:
Title:

FORM OF MORTGAGE

[To come]

INITIAL JOINT VENTURES

The Initial Joint Ventures shall be the following:

[To come]⁹

⁹ NTD: Initial draft to be provided by Company.

INACTIVE SUBSIDIARIES

The Inactive Subsidiaries shall be the following:

[To come]¹⁰

¹⁰ NTD: Initial draft to be provided by Company.

Exhibit N

New Convertible Notes Indenture

CBL & ASSOCIATES HOLDCO II, LLC
as Company,

CBL & ASSOCIATES PROPERTIES, INC.,
as REIT,

THE GUARANTORS PARTY HERETO,
as Guarantors,

AND

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee and Collateral Agent

INDENTURE¹

DATED AS OF [November 1], 2021

7.0% EXCHANGEABLE SENIOR SECURED NOTES DUE 2028

¹ This indenture remains subject to negotiation, revision, and approval of the Company and the Required Consenting Noteholders (as defined in the Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications), dated August 9, 2021 (Docket No. 1369).

CROSS-REFERENCE TABLE*

<i>Trust Indenture Act Section</i>	<i>Indenture Section</i>
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	16.03
(c)	16.03
313(a)	7.06
(b)(1)	7.06; 11.02
(b)(2)	7.06; 7.07
(c)	7.06; 16.02
(d)	7.06
314(a)	4.08; 4.11; 16.02; 16.05
(b)	11.06
(c)(1)	16.04
(c)(2)	16.04
(c)(3)	N.A.
(d)	11.02; 11.05; 11.06
(e)	16.05
(f)	N.A.
315(a)	7.01
(b)	7.05; 16.02
(c)	7.01
(d)	7.01
(e)	6.11
316(a)	16.06
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.11
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	16.01
(b)	N.A.
(c)	16.01

N.A. means not applicable.

* This Cross Reference Table is not part of this Indenture.

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INDENTURE, dated as of [November 1], 2021, between CBL & ASSOCIATES HOLDCO II, LLC, a Delaware limited liability company (together with its successors and assigns under this Indenture, the “*Company*”), having its principal office at 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, the GUARANTORS party hereto from time to time, CBL & ASSOCIATES PROPERTIES, INC., a Delaware corporation (together with its successors and assigns under this Indenture, the “*REIT*”), having its principal executive office located at 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, and WILMINGTON SAVINGS FUND SOCIETY, FSB (together with its successors and assigns under this Indenture, the “*Trustee*”), as Trustee, and WILMINGTON SAVINGS FUND SOCIETY, FSB (together with its successors and assigns under this Indenture, the “*Collateral Agent*”), as Collateral Agent.

RECITALS

WHEREAS, pursuant to the terms and conditions of the Third Amended Joint Chapter 11 Plan, dated May 26, 2021, as the same may be amended, modified or restated from time to time (the “*Plan of Reorganization*”) relating to the reorganization under Chapter 11 of Title 11 of the United States Code of the REIT and certain of its direct and indirect Subsidiaries, which Plan of Reorganization was confirmed by order, dated August 11, 2021, of the Bankruptcy Court (the “*Bankruptcy Order*”), the holders of Consenting Crossholder Claims (as defined in the Plan of Reorganization) and Unsecured Claims (as defined in the Plan of Reorganization) are to be issued the Securities (as hereinafter defined) in an aggregate principal amount of \$150,000,000;

WHEREAS, the REIT has duly authorized the execution and delivery of this Indenture to provide its limited guarantee in respect of the Securities issued hereunder; and

WHEREAS, (a) all acts and things necessary to make (i) the Securities, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company; (ii) the Guarantees of the Guarantors hereunder the valid, binding and legal obligations of the Guarantors; (iii) the Limited Guarantee of the REIT hereunder the valid, binding and legal obligation of the REIT; and (iv) this Indenture a valid agreement of the Company, the Guarantors and the REIT, according to its terms, have been done and performed, and (b) the execution of this Indenture and the issuance hereunder of the Securities have in all respects been duly authorized.

NOW, THEREFORE, in order to declare the terms and conditions upon which the Securities are, and are to be, authenticated, issued and delivered, and in consideration of the premises set forth herein, the Company, the Guarantors and the REIT covenant and agree with the Trustee and Collateral Agent for the equal and proportionate benefit of the respective Holders from time to time of the Securities (except as otherwise provided below), as follows:

ARTICLE 1 Definitions and Incorporation by Reference

SECTION 1.01 Definitions.

“*Acceleration Premium*” means, with respect to any Securities on any applicable acceleration date, the present value at such acceleration date of all required and unpaid interest

payments due on such Security through the Stated Maturity of the Securities (excluding accrued but unpaid interest to the acceleration date), computed using a discount rate equal to the relevant Acceleration Premium Treasury Rate as of such acceleration date plus 50 basis points, as calculated by the Company or its agent; the Trustee shall have no responsibility to calculate or verify the calculation of the Acceleration Premium.

“*Acceleration Premium Treasury Rate*” means, as of the applicable acceleration date, the yield to maturity as of such acceleration date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available two Business Days prior to such acceleration date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such acceleration date to the Stated Maturity, *provided, however*, that if the period from such acceleration date to the Stated Maturity is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“*Acquired Debt*” means Indebtedness of a Person:

- (1) existing at the time such Person is merged or consolidated with or into the Company or any Subsidiary or becomes a Subsidiary of the Company but only to the extent not paid in connection with such merger or consolidation; or
- (2) assumed by the Company or any Subsidiary in connection with the acquisition of assets from such Person.

Acquired Debt shall be deemed to be Incurred on the date the acquired Person is merged or consolidated with or into the Company or any Subsidiary or becomes a Subsidiary of the Company or the date of the related acquisition, as the case may be, determined on a consolidated basis in accordance with accounting principles generally accepted in the United States.

“*Additional Assets*” means:

- (1) any property, plant, equipment or other tangible assets used or useful in a Related Business;
- (2) the Capital Stock of a Person that becomes a Subsidiary as a result of the acquisition of such Capital Stock by the Company or another Subsidiary; or
- (3) Capital Stock in any existing or future Subsidiary or Joint Venture that owns any Property so long as such acquired Capital Stock is Collateral to the extent required by the terms of this Indenture;

provided, however, that any such Subsidiary or Person described in clause (2) or (3) above is primarily engaged in a Related Business.

“*Additional Shares*” has the meaning specified in Section 13.02(a).

“*Affiliate*” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*After-Acquired Property*” means any property (other than Collateral or Excluded Property) that is acquired or otherwise owned by the Company or any Subsidiary after the Issue Date of a type that secures the Secured Obligations.

“*Applicable Procedures*” means, with respect to any matter at any time, the policies and procedures of the Depository, if any, that are applicable to such matter at such time.

“*Asset Sale*” means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Subsidiary, including (x) any disposition by means of a merger, consolidation or similar transaction, (y) any Event of Loss, loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title or use and (z) a disposition in connection with a Sale and Leaseback Transaction (each referred to for the purposes of this definition as a “*disposition*”), of:

- (1) any assets or other rights or property that constitute Property Collateral;
- (2) any shares of Capital Stock of a Subsidiary (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Subsidiary);
- (3) the ownership interest of the Company or any Subsidiary in a Joint Venture; or
- (4) any other assets (other than Capital Stock) of the Company or any Subsidiary outside of the ordinary course of business of the Company or such Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

- (A) a disposition by a Subsidiary to the Company or by the Company or a Subsidiary to a Subsidiary so long as (a) the covenants in Section 5.01, Section 5.02 and Section 5.03, to the extent applicable, are satisfied or do not expressly prohibit such transfer, (b) if a disposition is by a Subsidiary Guarantor, such disposition must be to a Subsidiary Guarantor or a Subsidiary that becomes a Subsidiary Guarantor pursuant to Section 4.07 unless such Subsidiary will become an Excluded Non-Guarantor Subsidiary pursuant to clause (3) of the definition of Excluded Non-Guarantor Subsidiary substantially concurrently with such disposition and (c) if such transfer includes Collateral (unless such transfer is to a Subsidiary that will become an Excluded Non-Guarantor Subsidiary pursuant to clause (3) of the definition of Excluded Non-Guarantor Subsidiary substantially concurrently with such transfer), such transfer does not occur until and unless the

transferee has caused a valid, enforceable, perfected first priority Lien in or on such Collateral (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and has executed and delivered to the Collateral Agent the following documents and certificates and any other documents and certificates required by Section 4.14, Article 11 or any other provision of this Indenture:

(a) to the extent such Collateral constitutes Property set forth in Category 1 on Annex I hereto, (x) a Mortgage with respect to such Collateral, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office) and (y) Security Documents with respect to all personal property of such transferee, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee);

(b) to the extent such Collateral constitutes Capital Stock of a Subsidiary that owns a Property set forth in Category 1, Category 3 or Category 8 on Annex I hereto, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all other personal property of such transferee, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(c) to the extent of any Collateral other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the

Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(d) to the extent such Collateral constitutes Property set forth in Category 1 on Annex I hereto, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require; and

(e) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

(B) any single transaction or series of related transactions that involves the disposition of assets having a Fair Market Value of less than \$10 million;

(C) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind (other than any property management agreement with respect to a material portion of the Properties of the Company and its Subsidiaries);

(D) any issuance or sale of Capital Stock of the Company;

(E) a disposition of cash or Temporary Cash Investments;

(F) the licensing or sublicensing of intellectual property or other general intangibles and licenses, sublicenses, leases, subleases and easements of other property in the ordinary course of business which would not reasonably be expected to materially interfere with the business of the Company and its Subsidiaries, as determined in good faith by an Officer of the Company;

(G) dispositions of assets secured by Liens incurred pursuant to clauses (2), (3), (4) and (5) of the definition of Permitted Liens to lenders or other secured parties holding such Permitted Liens to secure Indebtedness permitted to be Incurred pursuant to Section 4.02(b)(2), (3), (4), (7), (8), (9) and (10) upon the default of, and in satisfaction of all of, such Indebtedness, to the extent the Board of Directors determines in good faith such disposition is commercially reasonable in light of the circumstances;

(H) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien);

(I) a contribution of any Undeveloped Property to a Joint Venture in which a Subsidiary holds an ownership interest in connection with the formation of such Joint Venture; provided that (i) the sole asset of such Subsidiary is Capital Stock in such Joint Venture; (ii) the Company uses commercially reasonable efforts in good faith to cause the pledge of the Capital Stock in such Subsidiary to be permitted by the agreements governing such Joint Venture and any agreement

governing Indebtedness of such Joint Venture, and, solely to the extent permitted pursuant to such commercially reasonable efforts in good faith, the Capital Stock in such Subsidiary is pledged as Collateral and, to the extent such Capital Stock is After-Acquired Property, the provisions of Section 4.14 are complied with; and (iii) the provisions of Section 4.07 are complied with in respect of such Subsidiary such that such Subsidiary is or becomes a Subsidiary Guarantor;

(J) for purposes of Section 4.03 only, a disposition of all or substantially all the assets of the Company in accordance with Section 5.01;

(K) leases and subleases of Property in the ordinary course of business;

(L) [Reserved];

(M) any exchange of (i) assets made in the ordinary course of business for assets related to a Related Business of a comparable or greater market value or usefulness to the business of the Company as a whole, as determined in good faith by the Boards of Directors of both the Company and the REIT and (ii) like property for use in a Related Business that is allowable under Section 1031 of the Code that has been approved by the Boards of Directors of both the Company and the REIT (such assets referred to in clause (i) or like property referred to in clause (ii) so exchanged being referred to as the “Exchanged Property”) so long as (1) in the case of clause (ii), if such Exchanged Property includes Collateral that constitutes Property set forth in Category 1 on Annex I hereto, the Fair Market Value (as determined in good faith by the Boards of Directors of both the Company and the REIT) of such Exchanged Property, together with the Fair Market Value of any prior exchanges of Exchanged Property constituting Property set forth in Category 1 on Annex I hereto made pursuant to clause (ii), shall not exceed \$75.0 million in the aggregate and (2) in the case of clause (i) or (ii), if such Exchanged Property includes Collateral, such exchange shall not occur until and unless the following conditions are satisfied: (x)(i) if the Received Property (as defined below) constitutes Capital Stock of a Joint Venture, the Subsidiary that acquires such Capital Stock shall be a Subsidiary Guarantor or become a Subsidiary Guarantor to the extent (A) required pursuant to Section 4.07 and (B) such guarantee is permitted by the agreements governing such Joint Venture and any agreement governing Indebtedness of such Joint Venture provided that the Company shall use its commercially reasonable efforts in good faith to cause such guarantee to be permitted, and any Property owned by such Joint Venture shall be deemed listed under “Category 4” on Annex I hereto, (ii) if any Received Property constitutes (directly or through the acquisition of Capital Stock) Excluded After-Acquired Property owned by a Subsidiary of a Subsidiary, then such Received Property shall be deemed listed under “Category 4” on Annex I hereto and the Subsidiary that owns the Capital Stock of the Subsidiary that directly owns such Received Property shall be a Subsidiary Guarantor to the extent required or become a Subsidiary Guarantor pursuant to Section 4.07 and (iii) if any Received Property (directly or through the acquisition of Capital Stock) is owned by a Subsidiary and is not subject to a Lien securing Non-Recourse Mortgage Indebtedness at the time of acquisition,

(a) such Subsidiary (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (b) such Received Property shall be deemed listed under “Category 1” on Annex I hereto, and (y) the Company or the Subsidiary Guarantor party to such exchange has caused a valid, enforceable, perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien in or on the property or assets received in exchange for such Exchanged Property (the “*Received Property*”) (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and has executed and delivered to the Collateral Agent the following documents and certificates and any other documents and certificates required by Section 4.14 and Article 11 of this Indenture; and

(a) to the extent such Received Property constitutes Property, (x) a Mortgage with respect to such Received Property, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office), (y) Security Documents with respect to all personal property of the Company or the Subsidiary Guarantor party to such exchange, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee) and (z) the remaining Real Property Collateral Requirements;

(b) to the extent such Received Property constitutes Capital Stock, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all other personal property of the Company or the Subsidiary Guarantor party to such exchange, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents; provided that to the extent that the pledge of Capital Stock in a Joint Venture is not permitted by the agreements governing such Joint Venture or any agreement governing Indebtedness of such Joint Venture,

the Company shall only be required to commercially reasonable efforts in good faith to provide a pledge of such Capital Stock in such Joint Venture;

(c) to the extent of any Received Property other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(d) to the extent such Received Property constitutes Property deemed listed under Category 1 on Annex I hereto, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require;

(e) to the extent such Received Property includes cash, such cash (which shall be deemed Net Available Cash) is deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien) and applied in accordance with Section 4.03; and

(f) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

(N) dispositions of receivables (including rents) in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings or the conversion of accounts receivable into notes receivable in the ordinary course of business;

(O) dispositions of obsolete, worn out, uneconomic or damaged property, equipment or other assets (other than any Property Collateral) in the ordinary course of business or consistent with past practice or industry practices that are no longer economically practical or commercially desirable to maintain or used or useful in the business of the Company and its Subsidiaries as determined in good faith by the Company;

(P) dispositions of Capital Stock in Joint Ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture

parties set forth in joint venture arrangements and similar binding written arrangements (the proceeds of which will be deemed to be Net Available Cash), so long as the Net Available Cash thereof is deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien) and applied in accordance with Section 4.03; and

(Q) the unwinding of any cash management services or Hedging Obligations.

“*Asset Sale Excess Proceeds Other Offer*” means, with respect to any Asset Sale Excess Proceeds Offer, an offer by the Company to purchase the Other Secured Notes pursuant to the terms of the Other Secured Notes Indenture conducted substantially concurrently with such Asset Sale Excess Proceeds Offer and in an amount equal to the Pro Rata Percentage Amount applicable to the Other Secured Notes with respect to the Asset Sale Trigger Event requiring the Company to make such Asset Sale Excess Proceeds Offer.

“*Asset Sale Excess Proceeds Other Secured Notes Unused Amount*” means, as to any Asset Sale Excess Proceeds Offer, the excess, if any, of (i) the Pro Rata Percentage Amount applicable to the Other Secured Notes with respect to such Asset Sale Excess Proceeds Offer over (ii) the aggregate Asset Sale Excess Proceeds Offer Price payable in respect of the aggregate principal amount of Other Secured Notes validly tendered and accepted for purchase in such Asset Sale Excess Proceeds Other Offer made substantially concurrently with such Asset Sale Excess Proceeds Offer.

“*Asset Sale Excess Proceeds Securities Unused Amount*” means, as to any Asset Sale Excess Proceeds Offer, the excess, if any, of (i) the Pro Rata Percentage Amount applicable to the Securities with respect to such Asset Sale Excess Proceeds Offer over (ii) the aggregate Asset Sale Excess Proceeds Offer Price payable in respect of the aggregate principal amount of Securities validly tendered and accepted for purchase in such Asset Sale Excess Proceeds Offer.

“*Authorized Representative*” means (i) in the case of the Notes Obligations, the Trustee, or (ii) in the case of the Other Secured Notes Obligations, the Other Secured Notes Trustee.

“*Average Life*” means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing:

(1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of or redemption or similar payment with respect to such Indebtedness (but not including any payments under any unexercised extensions) multiplied by the amount of such payment by,

(2) the sum of all such payments.

“*Bankruptcy Court*” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division, in the proceedings under Chapter 11 of the United States Bankruptcy Code styled *CBL & Associates Properties, Inc., et al.*, Debtors, Case No. No. 20-35226 (DRJ).

“*Bankruptcy Proceeding*” means the bankruptcy proceedings of the REIT and certain of its Subsidiaries under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court.

“*Board of Directors*” means:

- (1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;
- (2) with respect to a partnership, the Board of Directors of the general partner of the partnership;
- (3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

Unless otherwise specified herein, each reference to a Board of Directors will refer to the Board of Directors of the Company.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the applicable Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Trustee. Unless otherwise specified herein, each reference to a Board Resolution will refer to a Board Resolution of the Company.

“*Business Day*” means each day which is not a Legal Holiday.

“*Capital Lease Obligation*” means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty; provided, however, that Capital Lease Obligations shall exclude all operating leases.

“*Capital Stock*” of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“*Cash Settlement*” has the meaning specified in Section 13.04(a).

“*Casualty*” means any casualty, loss, damage, destruction or other similar loss with respect to real or personal property or improvements.

“*Clause A Distribution*” has the meaning specified in Section 13.06(c).

“*Clause B Distribution*” has the meaning specified in Section 13.06(c).

“*Clause C or D Distribution*” has the meaning specified in Section 13.06(c).

“*close of business*” means 5:00 p.m. (New York City time).

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Collateral*” means all assets and property, whether real, personal or mixed (including any leasehold interest under a ground lease), wherever located and whether now owned or at any time acquired after the Issue Date by the Company or any Subsidiary as to which a Lien is granted under the Security Documents to secure the Secured Obligations.

“*Collateral Agency and Intercreditor Agreement*” means the Collateral Agency and Intercreditor Agreement dated the Issue Date, among the Company, the REIT, the Guarantors, the Collateral Agent, the Trustee, as Authorized Representative for the Secured Parties holding Notes Obligations and as initial applicable Authorized Representative, and Wilmington Savings Fund Society, FSB, as the Other Secured Notes Trustee and as Authorized Representative for the Secured Parties holding Other Secured Notes Obligations.

“*Collateral Agent*” means Wilmington Savings Fund Society, FSB, in its capacity as collateral agent under the Indenture and Security Documents, until a successor replaces it in such capacity and, thereafter, means the successor.

“*Collateral Disposition*” means any Asset Sale of assets or other rights or property that constitute Collateral under the Security Documents. The sale or issuance of Capital Stock in a Subsidiary Guarantor that owns Collateral, or of Capital Stock in such Subsidiary Guarantor’s direct or indirect parent, such that, as a consequence, such Person no longer is a Subsidiary Guarantor, shall be deemed a Collateral Disposition of the Collateral owned by such Subsidiary Guarantor; provided, that a Subsidiary Guarantor that owns Collateral may form a Joint Venture and contribute assets constituting Undeveloped Property to such Joint Venture so long as the provisions of paragraph (I) of the definition of “Asset Sale” are complied with. For the avoidance of doubt, no Collateral Release shall constitute a Collateral Disposition.

“*Collateral Property*” means any Property that constitutes Collateral.

“*Collateral Release*” means (i) with respect to any Collateral owned by the Company or any Subsidiary, a release of the Liens securing the Secured Obligations on such asset or (ii) with respect to any Property that is directly owned by a Subsidiary of the Company and its Subsidiaries, the grant of any Lien on such Property that is a Permitted Lien, in each case of clause (i) and (ii), pursuant to a Release Trigger Event as a result of which such Collateral or Property, as applicable, continues to be owned by the Company or a Subsidiary.

“*Collateral Release Excess Proceeds Securities Unused Amount*” means as to any Collateral Release Excess Proceeds Offer, the excess, if any, of (i) the Pro Rata Percentage Amount applicable to the Securities with respect to such Collateral Release Excess Proceeds Offer over (ii) the aggregate Collateral Release Excess Proceeds Offer Price payable in respect of the aggregate

principal amount of Securities validly tendered and accepted for purchase in the Collateral Release Excess Proceeds Offer.

“*Collateral Release Excess Proceeds Redemption*” means, with respect to any Collateral Release Excess Proceeds Offer, a redemption of all or such portion of the Other Secured Notes pursuant to the terms of the Other Secured Notes Indenture conducted substantially concurrently with such Collateral Release Excess Proceeds Offer.

“*Combination Settlement*” has the meaning specified in Section 13.04(a).

“*Common Stock*” means any Capital Stock of any class or series of the REIT (including, on the Issue Date, the Common Stock, par value \$.001 per share, of the REIT) which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the REIT and which is not subject to redemption by the REIT. However, subject to the provisions of Section 13.12, shares issuable upon exchange of Securities shall include only shares of the class of Capital Stock of the Company designated as Common Stock, par value \$.001 per share, of the REIT on the Issue Date.

“*Company*” means the Person named as the “Company” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to Section 5.02 and, thereafter “Company” shall mean such successor Person.

“*Company Optional Exchange Make-Whole Amount*” means, with respect to any Security being exchanged by a Company-elected exchange pursuant to Section 15.01, the present value at the applicable Exchange Date of all required interest payments due on such Security through the Stated Maturity of the Securities (excluding accrued but unpaid interest to the such Exchange Date and excluding (in inverse order of maturity) any such interest payments in excess of 36 months of interest (or, as to any such interest payment, if any, payable on the Interest Payment Date next succeeding the date 36 months after such Exchange Date, the portion of such interest payment in respect of interest accruing after such date 36 months after the Exchange Date), computed using a discount rate equal to the Company Optional Exchange Treasury Rate as of such Exchange Date plus 50 basis points, discounted to the Exchange Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months), as calculated by the Company or its agent; the Trustee shall have no responsibility to calculate or verify the calculation of the Company Optional Exchange Make-Whole Amount.

“*Company Optional Exchange Treasury Rate*” means, as of the applicable Exchange Date, the yield to maturity as of such Exchange Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two Business Days prior to such Exchange Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such Exchange Date to the Stated Maturity (or, if earlier, the date 36 months after the Exchange Date), provided however, that if the period from such Exchange Date to the Stated Maturity is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“*Condemnation*” means any taking by a governmental authority of assets or property, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation or in any other manner.

“*Confirmation Date*” means the later of the date on which the Plan of Reorganization is first confirmed by the Bankruptcy Court or the last date on which an amendment, modification or restatement of the Plan of Reorganization is approved by the Bankruptcy Court.

“*Consolidated Modified Cash NOF*” means Net Operating Income from the Collateral Properties, determined on a proportional ownership basis based upon the Company’s ownership (direct or indirect) in each Subsidiary and Joint Venture that excludes straight-line rents and above / below market lease rates.

“*corporation*” means a corporation, association, company (including limited liability company), joint-stock company, business trust or other similar entity.

“*Daily Exchange Value*” means, for each of the 40 consecutive Trading Days during the Observation Period, 1/40th of the product of (i) the Exchange Rate on such Trading Day and (ii) the Daily VWAP of the shares of Common Stock on such Trading Day.

In addition, for purposes of the foregoing, the Daily Exchange Values of Reference Property will be determined by reference to (i) in the case of Reference Property or part of Reference Property that is traded on a U.S. national securities exchange, the volume-weighted average price of the applicable security (determined with respect to any such security in a manner consistent with the definition of “*Daily VWAP*”), (ii) in the case of any other property other than cash, the value thereof as determined by two independent nationally recognized investment banks as of the effective time of the Merger Event of the transaction pursuant to which the provisions of Section 13.12 shall have been applied and (iii) in the case of cash, at 100% of the amount thereof.

“*Daily Settlement Amount*” means, for each of the 40 consecutive Trading Days during the Observation Period,

(1) cash equal to the lesser of (i) the Daily Specified Dollar Amount and (ii) the Daily Exchange Value;
and

(2) if the Daily Exchange Value exceeds the Daily Specified Dollar Amount, a number of shares of Common Stock equal to (i) the difference between the Daily Exchange Value and the Daily Specified Dollar Amount, divided by (ii) the Daily VWAP of the shares of Common Stock on such Trading Day.

“*Daily Specified Dollar Amount*” means the result obtained by dividing the Specified Dollar Amount by 40.

“*Daily VWAP*” means, for each of the 40 consecutive Trading Days during the relevant Observation Period, the per share volume-weighted average price of the shares of Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “[<equity> AQR]” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading

day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such trading day determined, using a volume weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “Daily VWAP” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

“*Debt Service*” means for any period the sum of (i) interest expense (whether or not paid) on Indebtedness of the Operating Partnership and its Subsidiaries and Joint Ventures, and (ii) scheduled mandatory amortization payments of principal (whether or not paid) on Indebtedness of the Operating Partnership and its Subsidiaries and Joint Ventures, in each case, determined on a proportional ownership basis based upon the Operating Partnership’s ownership (direct or indirect) in each of its Subsidiaries and Joint Ventures. For the avoidance of doubt, scheduled mandatory amortization payments of principal as used in clause (ii) shall include payments of principal of Indebtedness under the New Bank Term Loan Facility, any other credit facilities and property mortgages but exclude payments of principal made with “Excess Cash Flow” (as such term is defined in the New Bank Term Loan Facility).

“*Debt Service Ratio*” means for any period the Modified Cash NOI for all consolidated and unconsolidated properties of the Operating Partnership based on its share (determined on a proportional ownership basis based upon the Operating Partnership’s ownership (direct or indirect) in each of its Subsidiaries and Joint Ventures) divided by Debt Service.

“*Default*” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“*Disqualified Stock*” means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

- (1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;
- (2) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or
- (3) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part;

in each case on or prior to the date that is 91 days after the earlier of the date (a) of the Stated Maturity of the Securities and (b) on which there are no Securities outstanding; provided, however, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Capital Stock

upon the occurrence of an “asset sale” occurring prior to the date 91 days after the earlier date determined pursuant to clause (a) or (b) above shall not constitute Disqualified Stock if:

(A) the “asset sale” provisions applicable to such Capital Stock are not materially more favorable to the holders of such Capital Stock than the terms applicable to the Securities in Section 4.03; and

(B) any such requirement only becomes operative after compliance with such terms applicable to the Securities, including the purchase of any Securities tendered pursuant thereto.

The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price shall be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Indenture; provided, however, that if such Disqualified Stock could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price shall be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

“*Distributed Property*” has the meaning specified in Section 13.06(c).

“*Dividend Available Threshold Amount*” means with respect to any cash dividend or distribution, the amount, if any, by which (i) the Dividend Threshold Amount on the “ex” date for such dividend or distribution exceeds (ii) the sum of respective amounts distributed per share of Common Stock in any other cash dividend or distribution having an “ex” date on or prior to, and in the same fiscal year as, the “ex” date for such dividend or distribution.

“*Dividend Threshold Amount*” means the fraction equal to (i) \$[_____]2 divided by (ii) [_____]3 shares of Common Stock, as such fraction is adjusted from time to time in inverse proportion to adjustments to the Exchange Rate pursuant to Section 13.06. The adjusted Dividend Threshold Amount shall equal the Dividend Threshold Amount applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Exchange Rate in effect immediately prior to the adjustment giving rise to the Dividend Threshold Amount adjustment and the denominator of which is the Exchange Rate as so adjusted. The Company will likewise make appropriate adjustments to the Dividend Threshold Amount where an Exchange Rate adjustment otherwise required to be made pursuant to the provisions of Section 13.06(a) through (e) is not made in accordance with the provisions of Section 13.06 that permit or require participation by Holders in a Received Dividend or other transaction in lieu of such Exchange Rate adjustment.

“*effective date*” has the meaning specified in Section 13.06(a).

² Note to Draft: To be the product of (i) the amount (the “*RLOP*”) equal to the percentage of Reorganized LP owned by the REIT on the Issue Date times (ii) \$15.0 million.

³ Note to Draft: To be the number of shares of Common Stock outstanding on the Issue Date.

“*Effective Date*” has the meaning specified in Section 13.02(b).

“*Event of Loss*” means, with respect to any Property Collateral (each an “*Event of Loss Asset*”), any (1) Casualty of such Event of Loss Asset, (2) Condemnation or seizure of such Event of Loss Asset or (3) settlement in lieu of clause (2) above.

“*ex’ date*” means:

(i) when used with respect to any issuance or distribution, the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Quoted Price was obtained without the right to receive such issuance or distribution;

(ii) when used with respect to any subdivision or combination of shares of Common Stock, the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market after the time at which such subdivision or combination becomes effective; or

(iii) when used with respect to any tender offer, the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market after the Expiration Time of such tender offer.

“*Exchange Act*” means the U.S. Securities Exchange Act of 1934, as amended.

“*Exchange Agent*” has the meaning specified in Section 2.03.

“*exchange amount*” means, with respect to any Securities being exchanged, an amount in dollars equal to the sum of (i) the aggregate principal amount of such Securities, plus (ii) the accrued and unpaid interest, if any, on such principal amount of such Securities to, but excluding, the Exchange Date, plus (iii) in the event of a Company Optional Exchange pursuant to Section 15.01, the Company Optional Exchange Make-Whole Amount.

“*Exchange Date*” has (for a Company-elected exchange pursuant to Section 15.01) the meaning specified in Section 15.02 or (for a Holder-elected exchange pursuant to Section 13.03) the meaning specified in Section 13.03(a).

“*Exchange Price*” means, in respect of each Security, as of any time, \$1,000, divided by the Exchange Rate as of such time.

“*Exchange Rate*” means initially [_____]4 shares of Common Stock per \$1,000 exchange amount, subject to adjustment as set forth herein.

⁴ To be the amount equal to the quotient of (x) \$1,000 divided by (y) the quotient of (i) the product of (a) \$350 million times (b) the RLOP divided by (ii) the Initial Share Amount. The “Initial Share Amount,” is equal to the product of (x) 105% times (y) the number of shares of Common Stock outstanding on the Issue Date (less any outstanding shares of Common Stock on the Issue Date constituting (i) restricted Common Stock or (ii) other Common Stock, in case of (i) or (ii), issued or awarded under the Management Incentive Plan).

“*exchange record date*” has the meaning specified in Section 13.13.

“*Excluded After-Acquired Property*” means any Property first acquired by any Subsidiary after the Issue Date that is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred to finance the purchase price of such Property (or Refinancing Indebtedness in respect thereof) pursuant to Section 4.02(b)(10).

“*Excluded Initial Property*” means, to the extent owned by the Company or any Subsidiary, (1) any Property that is set forth in Category 4 on Annex I hereto but only if and so long as such Property is subject to Permitted Liens granted to secure Indebtedness outstanding on the Issue Date incurred pursuant to Section 4.02(b)(4) or Refinancing Indebtedness in respect thereof incurred pursuant to Section 4.02(b)(9) and (2) any Property that is set forth in Category 3 or Category 8 on Annex I hereto.

“*Excluded Non-Guarantor Subsidiary*” means:

(1) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 4 on Annex I hereto but only if and so long as such Property is subject to Permitted Liens granted to secure Indebtedness outstanding on the Issue Date incurred pursuant to Section 4.02(b)(2) or Refinancing Indebtedness in respect thereof incurred pursuant to Section 4.02(b)(9);

(2) any Subsidiary that directly owns solely a direct interest in a Joint Venture that directly or indirectly owns solely a Property (or Properties) set forth in Category 4 or Category 7 on Annex I hereto but only if and so long as the guaranty by such Subsidiary of the Secured Obligations is not permitted by the agreements governing such Joint Venture or any agreement governing Indebtedness of such Joint Venture in existence on the Issue Date;

(3) any Subsidiary that directly owns solely the Capital Stock of a Subsidiary that directly owns solely a Property (or Properties) set forth in Category 1, Category 3 or Category 8 on Annex I hereto but only if and so long as such Property (or all of such Properties) so owned is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4), (3) or (7), respectively, or Recourse Indebtedness incurred pursuant to Section 4.02(b)(14) and the guaranty of the Secured Obligations by such Subsidiary owning such Capital Stock is not permitted by the agreements governing such Indebtedness of such Subsidiary; provided, with respect to the release of the Note Guarantee of a Subsidiary Guarantor that owns solely the Capital Stock of a Subsidiary that directly owns solely such Property (or Properties) in Category 1, Category 3 or Category 8 set forth on Annex I hereto, the Release Condition shall be satisfied;

(4) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 3 set forth on Annex I hereto;

(5) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 8 set forth on Annex I hereto;

(6) any Subsidiary that directly owns solely a Property (or Properties) set forth in Category 1 on Annex I hereto but only if and so long as such Property (or all of such Properties) so owned is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4); provided, with respect to the release of the Note Guarantee of a Subsidiary Guarantor that owns solely such Property (or Properties) in Category 1 set forth on Annex I hereto, the Release Condition shall be satisfied; and

(7) (i) any Subsidiary existing as of the Issue Date that is listed as an Inactive Subsidiary on Exhibit G hereto (an “*Inactive Subsidiary*”) so long as (a) such Subsidiary is, and continues to be, a shell entity that (x) has assets of less than \$100,000, (y) has liabilities of less than \$100,000 and (z) is not engaged in any business and (b) such Subsidiary does not own any direct or indirect equity interest in a Subsidiary Guarantor or any other Person that owns Property Collateral and (ii) The Pavilion Collecting Agent, LLC and the Hammock Landing Collecting Agent, LLC (each a “*Specified Subsidiary*”) so long as the Specified Subsidiary continues to be used solely as a conduit for the collection of certain taxes and fees which are then substantially remitted to third parties; provided that if at any time such Subsidiary referenced in clause (i) fails to meet any of the conditions in clauses (a) and (b) of clause (i) or the Specified Subsidiary no longer acts in the capacity referred to in clause (ii) and fails to meet any of the conditions in clauses (a) and (b) of clause (i), then within 30 days of such time the Company shall cause such Subsidiary to become a Subsidiary Guarantor as if such Subsidiary had become a new Subsidiary of the Company in accordance with Section 4.07 of this Indenture.

“*Excluded (Non-Pledged) Subsidiary /Joint Venture Capital Stock*” means:

(1) [Reserved];

(2) the Capital Stock in any Excluded Non-Guarantor Subsidiary:

(A) referred to in clauses (1) and (2) of the definition of Excluded Non-Guarantor Subsidiary;

(B) referred to in clause (4) of the definition of Excluded Non-Guarantor Subsidiary but only if and so long as (x) the Property owned by such Subsidiary is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(3) or Recourse Indebtedness incurred pursuant to Section 4.02(b)(14), (y) the pledge of such Capital Stock to secure the Secured Obligations is not permitted by the agreements governing the related Indebtedness or Refinancing Indebtedness referred to therein, and (z) the Release Condition has been satisfied; or

(C) referred to in clause (5) of the definition of Excluded Non-Guarantor Subsidiary but only if such Capital Stock is released pursuant to Section 12.05(8)(iii);

(D) referred to in clause (6) of the definition of Excluded Non-Guarantor Subsidiary but only if and so long as (x) the Property owned by such Subsidiary is

subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4) or Recourse Indebtedness incurred pursuant to Section 4.02(b)(14), (y) the pledge of such Capital Stock to secure the Secured Obligations is not permitted by the agreements governing the related Indebtedness or Refinancing Indebtedness referred to therein, and (z) the Release Condition has been satisfied;

(3) the Capital Stock in any Joint Venture that owns solely a Property (or Properties) set forth in Category 4 on Annex I hereto; and

(4) the Capital Stock in any Joint Venture that owns solely a Property (or Properties) set forth in Category 7 on Annex I hereto.

“*Excluded Other Property*” means any personal property to the extent (any only so long as) constituting “*Excluded Property*” (as defined in the Security Documents).

“*Excluded Property*” means any Excluded Initial Property, Excluded After-Acquired Property, Excluded Other Property, Excluded Released Property or Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock.

“*Excluded Released Property*” means:

(1) the Capital Stock in any Excluded Non-Guarantor Subsidiary referred to in either (a) clauses (2)(B) or (D) of the definition of Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock or (b) clause (2)(C) of such definition;

(2) any asset (x) constituting a Property that either (A) was Collateral Property on the Issue Date and is set forth in Category 1 on Annex I hereto or (B) became Collateral Property after the Issue Date upon the acquisition thereof pursuant to Section 4.14 and (y) Liens on which securing the Secured Obligations were released at the time Liens were granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4) and in compliance with Section 4.04 and Section 11.05;

(3) any Property set forth in Category 3 or Category 4 on Annex I hereto at the time Permitted Liens were granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(3) or (9) and in compliance with Section 4.04; or

(4) any Property constituting Undeveloped Property that is contributed to a Joint Venture in which a Subsidiary holds an ownership interest in connection with the formation of such Joint Venture; provided that (i) the sole asset of such Subsidiary is Capital Stock in such Joint Venture; (ii) the Company uses commercially reasonable efforts in good faith to cause the pledge of the Capital Stock in such Subsidiary to be permitted by the agreements governing such Joint Venture and any agreement governing Indebtedness of such Joint Venture, and, solely to the extent permitted pursuant to such commercially reasonable efforts in good faith, the Capital Stock in such Subsidiary is pledged as Collateral and, to the extent such Capital Stock is After-Acquired Property, the provisions of Section 4.14 are complied with; and (iii) the provisions of Section 4.07 are complied

with in respect of such Subsidiary such that such Subsidiary is or becomes a Subsidiary Guarantor.

“*Fair Market Value*” means, with respect to any Asset Sale or other transaction, the price that would be negotiated in an arm’s-length transaction between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as such price is determined in good faith by:

- (1) if the value of such Asset Sale or other transaction is less than \$10.0 million, an Officer of the Company; and
- (2) if the value of such Asset Sale or other transaction is \$10.0 million or greater, the Boards of Directors of both the Company and the REIT.

“*Final Settlement Method Election Date*” means the earlier of (i) the date the Company first gives notice of a redemption of Securities pursuant to Section 3.07(b) and (ii) the 45th Scheduled Trading Day preceding the Maturity Date.

“*Form of Notice of Exchange*” means the “Form of Notice of Exchange” attached as Attachment 1 to the Form of Note attached hereto as Exhibit D.

“*Fundamental Change*” means the occurrence of any of the following after the Issue Date:

- (i) a “*person*” or “*group*” within the meaning of Section 13(d)(3) of the Exchange Act (other than any Permitted Holder) becomes the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of shares of Common Stock representing 50% or more of the voting power of the shares of Common Stock entitled to vote generally in the election of members of the Board of Directors of the REIT and (A) files a Schedule 13D or Schedule TO or any other schedule, form or report under the Exchange Act disclosing such beneficial ownership or (B) the Company or the REIT otherwise becomes aware of any such person or group; *provided*, that this clause (i) shall not apply to a transaction specified in clause (iv) below, including any exception thereto;
- (ii) at any time after the Initial Listing Date, the shares of Common Stock into which the Securities are then exchangeable, cease to be listed for trading on any of the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the New York Stock Exchange (or any of their respective successors) for a period of 20 consecutive trading days;
- (iii) the REIT’s shareholders approve any plan or proposal for the liquidation or dissolution of the REIT (other than in a transaction or event or series of transactions or events specified in clause (iv));
- (iv) the consummation of (A) any recapitalization, reclassification or change of the shares of Common Stock (other than changes resulting from a share split or share combination or changes solely to the par value) as a result of which all of the shares of Common Stock are converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the REIT pursuant to which

all of the shares of Common Stock are converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the REIT and its Subsidiaries, taken as a whole, to any Person other than one of the REIT's wholly owned Subsidiaries (any such transaction or event or series of transactions or events described under subclause (A), (B) or (C) above, a "Merger Transaction"); *provided, however*, that neither (1) a transaction or event or series of transactions or events described in subclause (A) or (B) in which the holders of all classes of the Common Stock of the REIT immediately prior to such transaction or event or series of transactions or events own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction or event or series of transactions or events in substantially the same proportions as such ownership immediately prior thereto nor (2) any merger or consolidation of the REIT solely for the purpose of changing its jurisdiction of incorporation to another state of the United States that results in a reclassification, conversion or exchange of the outstanding shares of Common Stock solely into shares of common stock or other similar common equity interests of the surviving entity shall be a Fundamental Change pursuant to this clause (iv) or clause (i) above; or

(v) the Company ceases to be at least [_____] ⁵ owned, directly or indirectly, by the REIT;

provided, however, that a transaction or event or series of transactions or events specified in clause (i) or (iv) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by holders of shares of Common Stock in such transaction or event or series of transactions or events (other than cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) under clause (i) or (iv) above consists of shares of common stock or other similar common equity interests traded or to be traded immediately following such transaction or event or series of transactions or events on the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the New York Stock Exchange (or any of their respective successors) and, as a result of the transaction or event or series of transactions or events, the Securities become exchangeable, upon satisfaction of the conditions to exchange, into such shares of Common Stock or other similar common equity interests and other applicable consideration (subject to the provisions of Section 13.04) all in accordance with the provisions of Article Fourteen. If, as the result of any Merger Event, the Securities become exchangeable into Reference Property (in lieu of Common Stock), the supplemental indenture described in the first paragraph of Section 13.12(a) shall provide for amendments to the definition of Fundamental Change so that thenceforth references therein to Common Stock shall, as nearly equivalent as practicable, instead be references to the Reference Property.

"Fundamental Change Expiration Time" has the meaning specified in Section 14.02(b)(i).

⁵ Note to Draft: To be the product of (x) the RLOP and (y) 100%.

“*Fundamental Change Purchase Date*” has the meaning specified in Section 14.02(a).

“*Fundamental Change Purchase Notice*” has the meaning specified in Section 14.02(b)(i).

“*Fundamental Change Purchase Price*” has the meaning specified in Section 14.02(a).

“*Fundamental Change Purchase Right Notice*” has the meaning specified in Section 14.02(c).

“*Future Joint Venture*” means any Person (other than any Person that is, or becomes, a Wholly-Owned Subsidiary of the Company), in which the Company or any Subsidiary of the Company holds or acquires an ownership interest (whether by way of Capital Stock or otherwise) that meets the following conditions: (1) such Person has been established in the ordinary course of business and consistent with past practice as the Initial Joint Ventures in connection with the acquisition or development of property and/or other assets used or useful in a Related Business (as determined in good faith by the Company); (2) the Company or any Subsidiary of the Company is party to a customary joint venture agreement and related arrangements on customary and reasonable terms consistent with past practice as the Initial Joint Ventures and market terms at such time; (3) the ownership interest (whether by way of Capital Stock or otherwise) in such Person that is not owned by the Company or any Subsidiary of the Company is held by a third party that is not an Affiliate of the Company or the REIT and such third party has purchased its ownership interest in such Person for good and valuable consideration (as determined in good faith by the Company); and (4) to the extent such Person would otherwise meet the criteria established in the definition of Subsidiary, the designation of such Person as a Joint Venture in lieu of a Subsidiary shall be evidenced to the Trustee by the Company providing an Officer’s Certificate within 30 days after the creation or acquisition of such Person certifying that the designation of such Person as a Joint Venture complied with the foregoing provisions.

“*GAAP*” means generally accepted accounting principles in the United States of America as in effect as of the date of determination, including those set forth in:

- (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants;
- (2) statements and pronouncements of the Financial Accounting Standards Board; and
- (3) such other statements by such other entity as approved by a significant segment of the accounting profession.

“*Grantor*” means, for purposes of the Collateral Agency and Intercreditor Agreement, the Company and each Subsidiary of the Company that has granted any Lien in favor of the Collateral Agent on any of its assets or properties to secure any of the Secured Obligations.

“*Guarantee*” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “*Guarantee*” shall not include endorsements for collection or deposit in the ordinary course of business. The term “*Guarantee*” used as a verb has a corresponding meaning.

“*Guarantor*” means each of (i) the Operating Partnership; (ii) a Subsidiary of the Company that executes this Indenture as a guarantor on the Issue Date and each other Subsidiary of the Company that thereafter guarantees the Securities pursuant to the terms of this Indenture (including pursuant to any Guaranty Supplemental Indenture); and (iii) any Person duly becoming a successor to any such Guarantor pursuant to Section 5.01(b), in each case until such time as any such Guarantor shall be released and relieved of its obligations pursuant to Section 10.05 hereof. For the avoidance of doubt, as used in this Indenture, the term “*Guarantor*” includes the Operating Partnership and the Subsidiary Guarantors but does not include the REIT.

“*Guaranty Supplemental Indenture*” means a supplemental indenture, substantially in the form attached hereto as Exhibit B, pursuant to which a Person that becomes a Subsidiary of the Company after the Issue Date guarantees the Company’s obligations with respect to the Securities on the terms provided for in this Indenture.

“*Hedging Obligations*” means, with respect to any Person, (1) the obligations of such Person under currency, exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements and (2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

“*Holder*” or “*Securityholder*” means the Person in whose name a Security is registered in the Security Register.

“*Incur*” means issue, assume, *Guarantee*, incur or otherwise become liable for; provided, however, that any Indebtedness of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. The term “*Incurrence*” when used as a noun shall have a correlative meaning. Solely for purposes of determining compliance with Section 4.02:

(1) amortization of debt discount or the accretion of principal with respect to a non-interest bearing or other discount security;

(2) the accrual of interest or dividends and the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms; and

(3) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Indebtedness;

in each case, shall not be deemed to be the Incurrence of Indebtedness.

“*Indebtedness*” means, with respect to any Person on any date of determination (without duplication):

(1) the principal in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(2) all Capital Lease Obligations of such Person;

(3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding any accounts payable or other liability to trade creditors arising in the ordinary course of business);

(4) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(5) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of such Person or, with respect to any Preferred Stock of any Subsidiary of such Person, the principal amount of such Preferred Stock to be determined in accordance with this Indenture (but excluding, in each case, any accrued dividends);

(6) all obligations of the type referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee; and

(7) all obligations of the type referred to in clauses (1) through (6) of other Persons secured by any Lien on any property or asset of such Person (whether or not such

obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the Fair Market Value of such property or assets and the amount of the obligation so secured.

Notwithstanding the foregoing, in connection with the purchase by the Company or any Subsidiary of any business, the term “Indebtedness” shall exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all obligations as described above; provided, however, that in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time shall be the accreted value thereof at such time.

“*Indenture*” means this Indenture, as amended or supplemented from time to time (including as amended and supplemented by any Guaranty Supplemental Indenture).

“*Initial Joint Ventures*” means each of the Joint Ventures existing as of the Issue Date that are listed on Exhibit F hereto; provided that upon any Initial Joint Venture becoming a Wholly Owned Subsidiary of the Company, such Person ceases to be a Joint Venture and shall automatically become a Subsidiary.

“*Initial Listing Date*” means the later of the (i) the Effective Date or (ii) the date on which the shares of Common Stock are first listed for trading on any of the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the New York Stock Exchange (or any of their respective successors).

“*Interest Payment Date*” means the maturity date of an installment of interest on the Securities.

“*Issue Date*” means [November 1], 2021, the first date on which the Securities are issued, authenticated and delivered under this Indenture.

“*Issue Date Opinions*” means the Opinions of Counsel delivered to the Trustee and the Collateral Agent as specified in Section 11.02(b)(1).

“*Joint Venture*” means any Person that is an Initial Joint Venture or a Future Joint Venture; provided that (i) upon a Joint Venture becoming a Wholly Owned Subsidiary of the Company, such Person ceases to be a Joint Venture and automatically becomes a Subsidiary and (ii) upon the Company or a Subsidiary of the Company ceasing to hold any ownership interest (whether by way of Capital Stock or otherwise) in such Joint Venture in a transaction that complies with the terms of this Indenture, such Person ceases to be a Joint Venture. Unless otherwise indicated in this Indenture, all references to a Joint Venture shall mean a Joint Venture of the Company or any Subsidiary of the Company.

“*Joint Venture Disposition*” means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) directly or indirectly by a Joint Venture, including (x) any disposition by means of a merger, consolidation or similar transaction, (y) any Event of Loss, Casualty, Condemnation or seizure or settlement in lieu thereof, or other loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title or use and (z) a disposition in connection with a Sale and Leaseback Transaction of any Property.

“*Junior Lien*” means a Lien, junior to the Liens on the Collateral securing the Secured Obligations as provided in the Collateral Agency and Intercreditor Agreement, granted by the Company or any Guarantor in favor of holders of Junior Lien Debt (or any Junior Lien Representative in connection therewith), at any time, upon any property of the Company or any Guarantor to secure Junior Lien Obligations; provided such Lien is permitted to be incurred under this Indenture.

“*Junior Lien Debt*” means the aggregate Indebtedness outstanding under each Junior Lien Document that is permitted to be incurred pursuant to this Indenture, the Security Documents and the Junior Lien Intercreditor Agreement.

“*Junior Lien Documents*” means, collectively, all indentures, credit agreements, loan documents, notes, guarantees, instruments, documents and agreements governing or evidencing, or executed or delivered in connection with, each Junior Lien facility, or pursuant to which Junior Lien Debt is incurred and the documents pursuant to which Junior Lien Obligations are granted.

“*Junior Lien Intercreditor Agreement*” means an intercreditor agreement, substantially in the form of Exhibit [B] to the Collateral Agency and Intercreditor Agreement, executed among the Collateral Agent, each Junior Lien Representative and the Company and the other parties from time to time party thereto as it may be amended, restated, supplemented or otherwise modified from time to time in accordance with this Indenture.

“*Junior Lien Obligations*” means Junior Lien Debt and all other Obligations in respect thereof.

“*Junior Lien Representative*” means in the case of any issuance or series of Junior Lien Debt, the trustee, agent or representative of the holders of such Junior Lien Debt who maintains the transfer register for such Junior Lien Debt and is appointed as a representative of such Junior Lien Debt (for purposes related to the administration of the security documents) pursuant to the Junior Lien Documents governing such Junior Lien Debt, together with its successors in such capacity.

“*Last Reported Sale Price*” of the shares of Common Stock on any Trading Day means (i) unless clause (ii) or (iii) applies, the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on such date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the shares of Common Stock are traded; (ii) if the shares of Common Stock are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the last quoted bid price for the shares of Common Stock in the over-the-counter market on the relevant date as reported by

OTC Markets Group Inc. or a similar organization; or (iii) if the shares of Common Stock are not so traded or quoted, the average of the mid-point of the last bid and ask prices for the shares of Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“*Legal Holiday*” means a Saturday, a Sunday or a day on which banking institutions are not required to be open in the State of New York.

“*Lien*” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“*Limited Guarantee*” means the limited guarantee of the REIT with respect to the Securities pursuant to Article 12 of this Indenture.

“*Make-Whole Fundamental Change*” means any transaction or event or series of transactions or events that occurs prior to the Maturity Date and constitutes a Fundamental Change (as determined after giving effect to any exceptions thereto or exclusions therefrom but without giving effect to subclause (1) of the proviso in clause (iv) of the definition thereof).

“*Market Disruption Event*” means (i) a failure by the primary U.S. national or regional securities exchange or market on which the shares of Common Stock are listed or admitted for trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the shares of Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the shares of Common Stock or in any options contracts or futures contracts relating to the shares of Common Stock.

“*Maturity*,” when used with respect to any Security, means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Maturity Date or by declaration of acceleration or otherwise.

“*Maturity Date*” means November 15, 2028, the fixed date on which the principal of the Securities is due and payable.

“*Maximum Exchange Rate*” has the meaning specified in Section 13.02(b).

“*Merger Event*” has the meaning specified in Section 13.12(a).

“*Modified Cash NOI*” means, for any given period, the sum of the following (without duplication):

(1) rents and other revenues recognized in the ordinary course from real property (including proceeds of rent loss or business interruption insurance and lease buyout, but excluding (i) pre-paid rents and revenues and security deposits except to the extent applied in satisfaction of tenants’ obligations for rent including write-off of debt,

and (ii) any amounts related to the amortization of above and below market rents, straight line rents, and write-off of landlord inducements; minus

(2) all operating expenses determined in accordance with GAAP (excluding interest and depreciation expense) related to the ownership, operation or maintenance of such real property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such real property, but specifically excluding general overhead expenses of the Operating Partnership and its Subsidiaries and any actual or imputed property management fees).

“*Moody’s*” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“*Mortgages*” means all mortgages, deeds of trust and similar documents, instruments and agreements (and all amendments, modifications and supplements thereof) creating, evidencing, perfecting or otherwise establishing the Liens on Collateral Property and other related assets to secure payment of the Secured Obligations or any part thereof.

“*Negative Pledge*” means, with respect to a given asset, any provision of a document, instrument or agreement which prohibits or purports to prohibit the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that an agreement that conditions a Person’s ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person’s ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, shall not constitute a Negative Pledge.

“*Net Available Cash*” from an Asset Sale, a Joint Venture Disposition or a Release Trigger Event, as applicable, means cash payments actually received by the Company or any Subsidiary of the Company therefrom (including (in the case of an Asset Sale or a Joint Venture Disposition) any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, and including (in the case of any Event of Loss) any insurance proceeds, proceeds of any Condemnation, damages awarded by any judgment or other amounts received on or in respect of the Collateral subject to the Event of Loss, and including (in the case of a Release Trigger Event) all cash proceeds of any Indebtedness Incurred as part of or in connection with such Release Trigger Event but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to such properties or assets or received in any other non-cash form), in each case net of:

(1) all legal, title, recording, engineering, environmental, accounting, investment banking, brokerage and relocation expenses, commissions and other fees and expenses Incurred, and all Federal, state, provincial, foreign and local taxes required to be paid or accrued as a liability under GAAP, as a consequence of such Asset Sale or Release Trigger Event, as applicable;

(2) all payments made on any Indebtedness (other than Secured Obligations, Subordinated Obligations or Junior Lien Debt) which is secured by any assets subject to such Asset Sale or Release Trigger Event, as applicable, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale or Release Trigger Event, as applicable, or by applicable law, be repaid out of the proceeds from such Asset Sale or Release Trigger Event, as applicable;

(3) all distributions and other payments required to be made to interest holders (other than the Company or any Subsidiary) in Joint Ventures as a result of such Asset Sale or Release Trigger Event, as applicable;

(4) the deduction of appropriate amounts as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such Asset Sale and retained by the Company or any Subsidiary after such Asset Sale;

(5) any portion of the purchase price from an Asset Sale placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Sale or otherwise in connection with that Asset Sale provided, however, that upon the termination of that escrow, Net Available Cash shall be increased by any portion of funds in the escrow that are released to the Company or any Subsidiary;

(6) with respect to an Asset Sale of any Property, any continuing or unsatisfied obligations of the Company or any Subsidiary to tenants of such Property; and

(7) any payments made after the Issue Date on any Indebtedness (other than Secured Obligations, Subordinated Obligations or Junior Lien Debt) resulting in the payment in full or retirement of such Indebtedness prior to such Asset Sale or Release Trigger Event.

“*New Bank Claim Borrower*” means CBL & Associates Holdco I, LLC and its successors and assigns.

“*New Bank Term Loan Facility*” means the Amended and Restated Credit Agreement, dated as of [November 1], 2021 by and among the New Bank Claim Borrower, as borrower, each of the financial institutions signatory thereto, together with their successors and assignees, and Wells Fargo Bank, National Association, as administrative agent, as amended, restated, modified, renewed, refunded, restructured, supplemented, replaced or refinanced from time to time in whole or in part from time to time.

“*Non-Recourse Mortgage Indebtedness*” means, with respect to (i) any Subsidiary that owns solely a Property (or Properties) or (ii) any Capital Stock of such Subsidiary, Indebtedness secured solely by a Permitted Lien on such Property or such Capital Stock (provided that individual financings provided by one lender or group of lenders may be cross collateralized to other financings provided by such lenders or their affiliates) that is (1) non-recourse to such Subsidiary, other than with respect to such Property or, as applicable, the Capital Stock in such Subsidiary, and (2) non-recourse to the Company or any other Subsidiary (other than such Subsidiary that owns such Property or such Capital Stock to the extent of such Property or such Capital Stock);

except, in the case of clauses (i) and (ii), for indemnities and limited contingent guarantees arising from “bad act” recourse trigger provisions found in secured real estate financing transactions and other customary “non-recourse carveout” guaranties.

“*Note Documents*” means this Indenture, the Securities, and the Security Documents.

“*Note Guarantee*” means the joint and several guarantee pursuant to Article 10 hereof by a Guarantor of the Company’s obligations with respect to the Securities and the other Note Documents.

“*Notes Obligations*” means the Obligations of the Company and the Guarantors with respect to the Securities and the Note Guarantees and all other obligations of the Company and the Guarantors to the Holders or the Trustee and/or the Collateral Agent under the Note Documents, according to the terms hereunder or thereunder.

“*Notice of Exchange*” has the meaning specified in Section 13.03(a).

“*Obligations*” means, with respect to any Indebtedness, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, and other amounts payable pursuant to the documentation governing such Indebtedness.

“*Observation Period*” with respect to any Security surrendered for exchange means the 40 consecutive Trading-Day period commencing on (and including) the 41st Scheduled Trading Day prior to the related Exchange Date, except that with respect to any Exchange Date that is on or after the Final Settlement Method Election Date, the Observation Period means the 40 consecutive Trading Days commencing on (and including) the 41st Scheduled Trading Day prior to the Maturity Date.

“*Officer*” means the Chairman, the Chief Executive Officer, the President, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, the REIT, CBL Holdings I, Inc., or the Guarantors, as applicable.

“*Officer’s Certificate*” means a certificate signed by an Officer of the Company (or of the general partner of the managing member of the Company) or the REIT, as applicable, which certificate shall be deemed to be, and the Trustee may rely on its being, executed and delivered by the Officer signing it on behalf of the Company or the REIT, as applicable, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee. Unless otherwise specified here, each reference to an Officer’s Certificate will refer to an Officer’s Certificate of the Company.

“*open of business*” means 9:00 a.m. (New York City time).

“*Operating Partnership*” means CBL & Associates Limited Partnership, as reorganized pursuant to the Plan of Reorganization, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “*Operating Partnership*” shall mean such successor Person.

“*Opinion of Counsel*” means a written opinion of counsel, who may be an employee of or counsel for the Company or other counsel who shall be reasonably acceptable to the Trustee, that, if required by the Trust Indenture Act, complies with the requirements of Section 314(e) of the Trust Indenture Act.

“*Other Secured Noteholders*” means the holders of notes issued pursuant to the Other Secured Notes Indenture.

“*Other Secured Notes*” means the Company’s 10.0% Senior Secured Notes due 2029 issued on the Issue Date.

“*Other Secured Notes Indenture*” means that certain indenture, dated as of the Issue Date, between the Company, the Guarantors party thereto from time to time, the REIT, and Wilmington Savings Fund Society, FSB, as Trustee and Wilmington Savings Fund Society, FSB, as Collateral Agent, relating to the Other Secured Notes.

“*Other Secured Notes Obligations*” means all Obligations under the Other Secured Notes Indenture and the Security Documents.

“*Other Secured Notes Trustee*” means Wilmington Savings Fund Society, FSB, as trustee under the Other Secured Notes Indenture.

“*Permitted Collateral Liens*” means any “Permitted Liens” other than Liens specified in clauses (2), (3), (4), (5), (14) or (18) of the definition of “Permitted Liens.”

“*Permitted Holders*” means (i) each of the Holders (as defined in the Registration Rights Agreement) that is a party to the Registration Rights Agreement and (ii) any Affiliates and Related Funds of the persons specified in clause (i) (other than the Company, the REIT or any Guarantor).

“*Permitted Liens*” means, with respect to any Person:

(1) Liens pursuant to the Security Documents to secure Indebtedness and related Obligations permitted under Section 4.02(b)(1);

(2) Liens to secure Non-Recourse Mortgage Indebtedness and related Obligations permitted under Section 4.02(b)(2), (3), (4), (7) or (8) so long as such Liens are limited to, and such Indebtedness and other Obligations are secured to the extent of any assets of the Company or any Subsidiary or Joint Venture solely by, the related Excluded Property referenced in the applicable subsection of Section 4.02(b);

(3) Liens to secure Non-Recourse Mortgage Indebtedness and related Obligations permitted under Section 4.02(b)(9) so long such Liens are limited to, and such Indebtedness and other Obligations are secured to the extent of any assets of the Company or any Guarantor solely by, the related Excluded Initial Property;

(4) Liens to secure Non-Recourse Mortgage Indebtedness and related Obligations permitted under Section 4.02(b)(10) so long such Liens are limited to, and such

Indebtedness and other Obligations are secured to the extent of any assets of the Company or any Guarantor solely by, the related Excluded After-Acquired Property;

(5) Liens existing on the Issue Date (including Liens on any Excluded Initial Property securing Indebtedness outstanding on the Issue Date and related Obligations permitted under Section 4.02(b)(2)) other than those specified in clauses (1) through (4) above;

(6) Liens securing Junior Lien Debt in an amount which, together with the aggregate outstanding amount of all other Indebtedness secured by Liens Incurred pursuant to this clause (6), does not exceed \$75.0 million, but solely so long as such Junior Liens are subject to the Junior Lien Intercreditor Agreement;

(7) Liens securing taxes, assessments and other charges or levies imposed by any governmental authority that are not more than 60 days overdue (or if more than 60 days overdue, are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP);

(8) statutory Liens of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business for amounts that are not more than 60 days overdue (or if more than 60 days overdue, are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP);

(9) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar applicable laws;

(10) Liens consisting of encumbrances in the nature of zoning restrictions, easements, survey exceptions, restrictions, encroachments, and rights or restrictions of record on the use of real property (including minor defects or irregularities in title and similar encumbrances), which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person or the ownership of such property (and for the avoidance of doubt, shall include any encumbrance listed on a title insurance policy that has been issued for the benefit of the Collateral Agent);

(11) the rights of tenants under leases or subleases not interfering with the ordinary conduct of business of such Person;

(12) Licenses of intellectual property granted in the ordinary course of business which do not materially detract from the value of such intellectual property or impair the intended use thereof in the business of such Person;

(13) Liens on property or other assets or shares of Capital Stock of a Person at the time such Person becomes a Subsidiary (or at the time the Company or any Subsidiary acquires such property, other assets or shares of Capital Stock, including any acquisition by means of a merger, consolidation or other business combination transaction); provided,

however, that such Liens are not created, Incurred or assumed in anticipation of or in connection with such other Person becoming a Subsidiary (or such acquisition of such property, other assets or Capital Stock); provided, further, that such Liens are limited to all or part of the same property, other assets or Capital Stock (plus improvements, accessions, proceeds or dividends or distributions in connection with the original property, other assets or Capital Stock) that secured (or, under the written arrangements under which such Liens arose, could secure) the obligations to which such Liens relate;

(14) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be Incurred and secured under this Indenture; provided that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness or other Obligations being refinanced or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;

(15) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any Joint Venture pursuant to any Joint Venture agreement governing such Joint Venture;

(16) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(17) Liens securing Hedging Obligations not Incurred in violation of this Indenture; and

(18) Liens on Recourse Property to secure Recourse Indebtedness permitted under Section 4.02(b)(14).

For purposes of this definition, the term “Indebtedness” shall be deemed to include interest on, and fees and expenses Incurred in connection with, such Indebtedness.

“*Person*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“*Physical Settlement*” has the meaning specified in Section 13.04(a).

“*Preferred Stock*”, as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“*principal*” of a Security means the principal of the Security.

“*Pro Rata Percentage*” means, for the Securities or the Other Secured Notes, as applicable, as to any Asset Sale Trigger Event or Release Trigger Event, a fraction the numerator of which is the principal amount of Securities outstanding or the principal amount of Other Secured Notes outstanding, respectively, on the date of the Asset Sale Trigger Event or Release Trigger Event, as applicable, and the denominator of which is the sum of the principal amount of Securities outstanding and the principal amount of Other Secured Notes outstanding, respectively, on such date.

“*Pro Rata Percentage Amount*” means, for the Securities or the Other Secured Notes, as to any Asset Sale Trigger Event or Release Trigger Event, the product of (i) the Pro Rata Percentage for the Securities or the Other Secured Notes, respectively, and (ii) the Asset Sale Excess Proceeds (in the case of an Asset Sale Trigger Event) or the Collateral Release Excess Proceeds (in the case of a Release Trigger Event).

“*Property*” means a parcel (or group of related parcels) of real property (whether developed or vacant) that is owned or leased under a ground lease by the Company, any Subsidiary or any Joint Venture.

“*Property Collateral*” means (i) any Collateral Property and (ii) any Collateral constituting Capital Stock in a Subsidiary Guarantor that directly or indirectly owns Collateral Property.

“*Property Dividend*” means any payment by the REIT to all or substantially all holders of its Common Stock of any dividend, or any other distribution by the REIT to such holders, of any shares of capital stock of the REIT, evidences of indebtedness of the REIT, cash or other assets (including rights, warrants or other securities (of the REIT or any other Person)), other than any dividend or distribution (i) upon a Merger Event to which Section 13.12 applies or (ii) of any Common Stock referred to in Section 13.06(a).

“*Purchase Money Obligations*” means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of Capital Stock of any Person owning such property or assets, or otherwise.

“*Real Property Collateral Requirements*” means, the requirement that the Collateral Agent shall have received, for each Property included in Category 1 on Annex I hereto and each After-Acquired Property that constitutes Property deemed to be in Category 1 on Annex I hereto (each a “*Mortgaged Property*” and collectively, the “*Mortgaged Properties*”), in form and substance satisfactory to Collateral Agent, and at the sole cost and expense of the Company: (A) evidence that a Mortgage substantially in the form attached as Exhibit C has been duly executed, acknowledged and delivered by the record owner or holder of such Mortgaged Property and is in form suitable for recording in all recording offices necessary or desirable to create a valid and subsisting perfected first priority Lien (subject only to Permitted Collateral Liens) on such Mortgaged Property in favor of the Collateral Agent as security for the Secured Obligations, and that such Mortgage has been duly received for recording in the appropriate recording office; (B) an extended coverage mortgagee title insurance policy, insuring the Lien of each such Mortgage as a valid Lien on the Mortgaged Property described therein, free of any other Liens except

Permitted Collateral Liens, together with such customary endorsements, coinsurance and reinsurance as the Collateral Agent may reasonably request, in an amount at least equal to the Fair Market Value of such Mortgaged Property, together with all affidavits, indemnities, certificates, and other instruments or financing statements required in connection with the issuance of such policy, together with any endorsements thereto reasonably required by the Collateral Agent; (C) a current American Land Title Association/National Society for Professional Surveyors survey; (D) a Phase I Environmental Site Assessment; (E) any estoppels, subordination, non-disturbance and attornment agreements from third parties relating to such Mortgage or Mortgaged Property reasonably deemed necessary or advisable by the Collateral Agent (but limited to parties to reciprocal easement agreements, or tenants that lease more than 20,000 square feet of such Mortgaged Property) if such third parties are willing to deliver the same without material costs or burdensome conditions being imposed upon the Company in connection with the same; (F) a customary zoning report; (G) such existing appraisals, property condition reports, and other documents as the Collateral Agent may reasonably request; (H) if such information is not included on the survey, a flood insurance determination certificate, and if any improvements located on such Mortgaged Property are located in an area determined by the Federal Emergency Management Agency to have special flood hazards, evidence of flood insurance covering such Mortgaged Property in appropriate amount (or as may be required under applicable Law, including Regulation H of the Board of Governors); (I) such lien searches, tax certificates, and other documents as the Collateral Agent may reasonably request with respect to each such Mortgaged Property but only to the extent not already conducted or included as part of clauses (A) – (H); and (J) evidence of payment of any and all mortgage taxes, filing or recording fees and other similar charges and the costs and expenses of each of the foregoing requirements.

“*Received Dividend*” has the meaning specified in Section 13.06.

“*record date*” means, with respect to any dividend, distribution or other transaction or event in which the holders of shares of Common Stock have the right to receive any cash, securities or other property or in which the shares of Common Stock is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of shares of Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors of the REIT or by statute, contract or otherwise).

“*Recourse Indebtedness*” means, without duplication, that portion of any Indebtedness that is secured solely by a mortgage on any Property (or Properties) of any Subsidiary or Joint Venture or a Lien on the Capital Stock of such Subsidiary or Joint Venture, if required pursuant to the terms of such Indebtedness (such Property (or Properties) or Capital Stock, as applicable, “*Recourse Property*”), the principal amount of which has been guaranteed by (or is otherwise recourse to) the Company or any Subsidiary (other than such Subsidiary that owns such Property or such Capital Stock to the extent of such Property or such Capital Stock), but only with respect to such amount that has been guaranteed or is otherwise recourse to such Person, and, for the avoidance of doubt, excluding indemnities and limited contingent guarantees arising from “bad act” recourse trigger provisions found in secured real estate financing transactions and other customary “non-recourse carveout” guaranties.

“*Reference Property*” has the meaning specified in Section 13.12(a).

“*Refinance*” means, in respect of any Indebtedness, to refinance, replace, extend, renew, refund, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. “*Refinanced*” and “*Refinancing*” shall have correlative meanings.

“*Refinancing Indebtedness*” means Indebtedness that Refinances any Indebtedness of the Company or any Subsidiary existing on the Issue Date or Incurred in compliance with this Indenture, including Indebtedness that Refinances Refinancing Indebtedness; provided, however, that:

(1) (A) if the Stated Maturity of the Indebtedness being Refinanced is the same or earlier than the Stated Maturity of the Securities, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced and (B) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Securities, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Securities (provided that this clause (1) shall not apply to any Non-Recourse Mortgage Indebtedness or Recourse Indebtedness);

(2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced;

(3) the amount of such Indebtedness (other than with respect to Recourse Indebtedness and Non-Recourse Mortgage Indebtedness) that may be deemed Refinancing Indebtedness shall not exceed the aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding (plus fees and expenses, including any premium (including any premium paid in connection with a tender offer for such Indebtedness) and defeasance costs) under the Indebtedness being Refinanced; provided, however, (A) with respect to Recourse Indebtedness and Non-Recourse Mortgage Indebtedness if the amount of such Refinancing Indebtedness exceeds the aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) then outstanding (plus fees and expenses, including any premium (including any premium paid in connection with a tender offer for such Indebtedness) and defeasance costs) under the Indebtedness being Refinanced, then such excess will be deemed to be Net Available Cash from a Release Trigger Event and shall be applied in accordance with Section 4.04 and (B) with respect to Recourse Indebtedness, the aggregate principal amount of such Refinancing Indebtedness is permitted to be Incurred under Section 4.02(b)(14);

(4) if the Indebtedness being Refinanced is a Subordinated Obligation, such Refinancing Indebtedness is subordinate or junior in right of payment to the Securities at least to the same extent as the Subordinated Obligation being Refinanced;

(5) if the Indebtedness being Refinanced is Junior Lien Debt or any Junior Lien Obligation, such Refinancing Indebtedness is Junior Lien Debt, Junior Lien Obligations, unsecured Indebtedness or Subordinated Obligations;

(6) if the Indebtedness being Refinanced is Non-Recourse Mortgage Indebtedness, such Refinancing Indebtedness is Non-Recourse Mortgage Indebtedness;

(7) if the Indebtedness being Refinanced is Recourse Indebtedness, such Refinancing Indebtedness is either Recourse Indebtedness or Non-Recourse Mortgage Indebtedness; and

(8) if the Indebtedness being Refinanced is Acquired Debt, such Refinancing Indebtedness (A) is Incurred by the same obligors as the obligors of the Acquired Debt being Refinanced (and, if applicable, a newly-formed Subsidiary that does not own any Collateral or any other property or assets other than solely the Capital Stock of the Subsidiary that is the obligor of the Acquired Debt being Refinanced) and (B) shall not exceed the aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding (plus fees and expenses, including any premium (including any premium paid in connection with a tender offer for such Indebtedness) and defeasance costs) of the Acquired Debt being Refinanced (including if the Acquired Debt being Refinanced is Recourse Indebtedness or Non-Recourse Mortgage Indebtedness).

provided, further, however, that Refinancing Indebtedness shall not include Indebtedness of a Subsidiary that Refinances Indebtedness of the Company.

“*Registration Rights Agreement*” means the Registration Rights Agreement, dated as of the Issue Date, by and among the REIT and the other parties signatory thereto (including by joinder agreement) as such agreement may be amended, modified or supplemented from time to time.

“*Regular Record Date*” for the interest payable on any Interest Payment Date means the May 1 or November 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

“*REIT*” means the Person named as the “REIT” in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “REIT” shall mean such successor Person.

“*Related Business*” means any business in which the Company or any of the Subsidiaries was engaged on the Issue Date and any business related, ancillary or complementary to such business.

“*Related Fund*” means, with respect to any Person, any fund, account or investment vehicle that is controlled, advised, sub-advised, managed or co-managed by such Person, by any Affiliate of such Person, or, if applicable, such Person’s investment manager.

“*Release Condition*” means, in connection with the Incurrence of any Indebtedness pursuant to Sections 4.02(b)(3), (4), (7) or (14), the loan-to-value ratio as determined by an independent mortgage appraisal conducted on behalf of and for the benefit of the lender(s) of such Indebtedness shall be at least 50%.

“Release Trigger Event” means:

(1) with respect to any Subsidiary (A) that directly owns solely a Property (or Properties) set forth in Category 3 or Category 4 on Annex I hereto or (B) that directly owns solely Capital Stock in a Subsidiary that owns solely a Property (or Properties) set forth in Category 3 or Category 4 on Annex I hereto, the incurrence by such Subsidiary of Non-Recourse Mortgage Indebtedness permitted pursuant to Section 4.02(b)(3) or (9) and secured to the extent of any assets of such Subsidiary solely by Permitted Liens, and, in connection therewith such assets becoming Excluded Released Property; provided any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(2) with respect to any Subsidiary (A) that directly owns solely any Property set forth in Category 1 on Annex I hereto or (B) that directly owns solely Capital Stock in a Subsidiary that owns solely a Property (or Properties) set forth in Category 1 on Annex I hereto constituting Property Collateral that is to become Excluded Released Property as a result of such Release Trigger Event, the Incurrence by such Subsidiary owning such Property of Non-Recourse Mortgage Indebtedness permitted pursuant to Section 4.02(b)(4) and secured solely by assets of such Subsidiary and by such Capital Stock, solely to the extent of a Permitted Lien on such Excluded Released Property pursuant to clause (2) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(3) the incurrence of Recourse Indebtedness pursuant to Section 4.02(b)(14);

(4) [Reserved];

(5) with respect to a Subsidiary owning solely an ownership interest in a Joint Venture that owns solely any Property (or Properties) set forth in Category 4 or Category 7 on Annex I hereto, (i) the Incurrence by such Subsidiary of Indebtedness permitted pursuant to Section 4.02(b)(8) that (x) constitutes a Guarantee by such Subsidiary of Indebtedness Incurred by such Joint Venture to the extent constituting Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock; and (y) is secured by the Capital Stock held by such Subsidiary in such Joint Venture solely to the extent of a Permitted Lien on such Excluded Property incurred pursuant to clause (2) of the definition of Permitted Liens or (ii) the Incurrence by the Joint Venture of Indebtedness; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(6) with respect to any Subsidiary owning solely a Property (or Properties) constituting an Excluded Initial Property, the incurrence by such Subsidiary of Refinancing Indebtedness permitted pursuant to Section 4.02(b)(9) and secured solely by Permitted Liens on such Excluded Initial Property and, in connection therewith, the grant by such Subsidiary of Permitted Liens on such Excluded Initial Property to secure such Indebtedness; or

(7) with respect to any Subsidiary owning solely any Excluded After-Acquired Property, the incurrence by such Subsidiary of Non-Recourse Mortgage Indebtedness permitted pursuant to Section 4.02(b)(10) secured solely by Permitted Liens on such

Excluded After-Acquired Property, and in connection therewith, the grant by such Subsidiary of Permitted Liens on such Excluded After-Acquired Property to secure such Non-Recourse Mortgage Indebtedness; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04.

No later than five (5) Business Days after a Release Trigger Event, the Company shall deliver to the Trustee an Officer's Certificate in respect thereof in accordance with Section 4.04.

"*Sale and Leaseback Transaction*" means any arrangement providing for the leasing by the Company or any of its Subsidiaries of any real or tangible personal property, which property has been sold or transferred by the Company or such Subsidiary to a third Person who is not an Affiliate of the REIT or the Company in contemplation of such leasing.

"*Scheduled Trading Day*" means any day that is scheduled to be a Trading Day.

"*SEC*" means the U.S. Securities and Exchange Commission.

"*Secured Debt Documents*" means, collectively, (a) the Other Secured Notes Indenture and the Security Documents (as defined therein) and (b) this Indenture and the Security Documents.

"*Secured Obligations*" means, collectively, (a) the Other Secured Notes Obligations and (b) the Notes Obligations, in each case, to the extent such Obligations are required to be secured under the Secured Debt Documents.

"*Secured Parties*" means (a) the Collateral Agent, (b) the Other Secured Notes Trustee and the Other Secured Noteholders under the Other Secured Notes Indenture and (c) the Trustee and the Holders of the Securities.

"*Securities*" means 7.0% Exchangeable Senior Secured Notes due 2028 of the Company issued on the Issue Date.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended.

"*Security Documents*" means the Collateral Agency and Intercreditor Agreement and one or more security agreements, factoring agreements, pledge agreements, collateral assignments, debentures, mortgages, assignments of leases and rents, deeds of covenants, collateral agency agreements, control agreements, deeds of trust or other grants or transfers for security (including any Mortgage) executed and delivered by the Company or any Guarantor creating (or purporting to create) a Lien in favor of the Collateral Agent upon the Collateral for purposes of securing the Secured Obligations including any Notes Obligations or Other Secured Notes Obligations of the Company or any Subsidiary Guarantor under the Secured Debt Documents or the Security Documents, in each case as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and the terms hereof.

"*Senior Indebtedness*" means with respect to any Person:

(1) Indebtedness of such Person, whether outstanding on the Issue Date or thereafter Incurred, including the Securities; and

(2) all other Obligations of such Person (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person whether or not post-filing interest is allowed in such proceeding) in respect of Indebtedness described in clause (1) above unless, in the case of clauses (1) and (2), in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such Indebtedness or other obligations are subordinate in right of payment to the Securities or the Note Guarantee of such Person, as the case may be; provided, however, that Senior Indebtedness shall not include:

- (A) any obligation of such Person to the Company or any Subsidiary;
- (B) any liability for Federal, state, local or other taxes owed or owing by such Person;
- (C) any accounts payable or other liability to trade creditors arising in the ordinary course of business;
- (D) any Indebtedness or other Obligation of such Person which is subordinate or junior in right of payment to any other Indebtedness or other Obligation of such Person; or
- (E) that portion of any Indebtedness which at the time of Incurrence is Incurred in violation of this Indenture.

“*Settlement Amount*” has the meaning specified in Section 13.04(a).

“*Settlement Method*” means, with respect to any exchange of Securities, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company with respect to such exchange.

“*Settlement Notice*” has the meaning specified in Section 13.04(a).

“*Significant Subsidiary*” means any Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“*Specified Dollar Amount*” means the maximum cash amount per \$1,000 exchange amount of Securities to be received upon exchange as specified (or deemed specified) in the Settlement Notice related to any exchanged Securities.

“*Specified Holders*” means (1) the Permitted Holders, (2) any controlling stockholder, controlling member, general partner, majority owned Subsidiary, or spouse or immediate family member (in the case of an individual) of any Specified Holder, (3) any estate, trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons holding a controlling interest of which consist solely of one or more Persons referred to in the immediately preceding clauses (1) and (2), (4) any executor, administrator, trustee, manager, director or other similar fiduciary of any Person referred to in the immediately preceding clause (3) acting solely in such capacity, (5) any investment fund or other entity controlled by, or under common control with, a Specified Holder or the principals that control a Specified Holder, or (6) upon the

liquidation of any entity of the type described in the immediately preceding clause (5), the former partners or beneficial owners thereof.

“*Spin-Off*” has the meaning specified in Section 13.06(c).

“*Standard & Poor’s*” means S&P Global Ratings, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“*Stated Maturity*” means (i) with respect to the Securities, November 15, 2028, or (ii) with respect to any other security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

“*Stock Price*” means, with respect to any Make-Whole Fundamental Change, (i) if a holder of shares of Common Stock receives only cash in exchange for such holder’s shares of Common Stock in such Make-Whole Fundamental Change, the cash amount paid per share of Common Stock; or (ii) in all other cases, the average of the Last Reported Sale Prices of the shares of Common Stock over the 10 consecutive Trading Days prior to (but excluding) the Effective Date of such Make-Whole Fundamental Change.

“*Subordinated Obligation*” means, with respect to a Person, any Indebtedness of such Person (whether outstanding on the Issue Date or thereafter Incurred) which is subordinate or junior in right of payment to the Securities or a Note Guarantee of such Person, as the case may be, pursuant to a written agreement to that effect.

“*Subsidiary*” means, with respect to the REIT, the Operating Partnership or the Company, (i) any Person (excluding an individual), a majority of the outstanding voting stock, partnership interests, membership interests or other equity interests, as the case may be, of which is owned or controlled, directly or indirectly, by the REIT, the Operating Partnership or the Company, as the case may be, and/or by one or more other Subsidiaries of the REIT, the Operating Partnership or the Company, as the case may be; and (ii) without limitation of clause (i), any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof). For the purposes of this definition, “voting stock, partnership interests, membership interests or other equity interests” means stock or interests having voting power for the election of directors, trustees or managers (or similar members of the governing body of such person), as the case may be, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency. Unless otherwise indicated in this Indenture, all references to Subsidiary or Subsidiaries shall mean a Subsidiary or Subsidiaries of the Company. Notwithstanding the foregoing, a Person that meets and continues to meet the definition of a Joint Venture shall not be a Subsidiary.

“*Subsidiary Guarantor*” means the Guarantors that are Subsidiaries of the Company.

“*table*” has the meaning specified in Section 13.02(b).

“*Temporary Cash Investments*” means any of the following:

- (1) any investment in direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof;
- (2) investments in demand and time deposit accounts, certificates of deposit and money market deposits maturing within 270 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any State thereof or any foreign country recognized by the United States of America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of \$50.0 million (or the foreign currency equivalent thereof) and has outstanding debt which is rated “A” (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor;
- (3) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (1) above entered into with a bank meeting the qualifications described in clause (2) above;
- (4) investments in commercial paper, maturing not more than 180 days after the date of acquisition, issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of “P-1” (or higher) according to Moody’s or “A-1” (or higher) according to Standard & Poor’s;
- (5) investments in securities with maturities of nine months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least “A” by Standard & Poor’s or “A” by Moody’s; and
- (6) investments in money market funds that invest substantially all their assets in securities of the types described in clauses (1) through (5) above.

“*Trading Day*” means (a) except for purposes of determining Settlement Amounts pursuant to Section 13.04, a day during which trading in the shares of Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the shares of Common Stock are listed for trading and the Last Reported Sale Price for the shares of Common Stock is available, or (b) for purposes of determining Settlement Amounts pursuant to Section 13.04 only, a day on which (i) there is no Market Disruption Event and (ii) trading in the shares of Common Stock generally occurs on the New York Stock Exchange, or if the shares of Common Stock are not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the shares of Common Stock are then listed or, if the shares of Common Stock are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the shares of Common Stock are then listed or admitted for trading. For purposes of both

clause (a) and (b), if the shares of Common Stock are not so listed or admitted for trading, “Trading Day” means a “Business Day.”

“*Trigger Event*” has the meaning specified in Section 13.06(c).

“*Trustee*” means Wilmington Savings Fund Society, FSB, in its capacity as trustee under this Indenture, until a successor replaces it in such capacity and, thereafter, means the successor.

“*Trust Indenture Act*” or “*TIA*” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the Issue Date.

“*Trust Officer*” means, when used with respect to the Trustee:

(1) any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such Person’s knowledge of and familiarity with the particular subject; and

(2) who shall have direct responsibility for the administration of this Indenture; and when used with respect to the Collateral Agent, the corresponding officers of the Collateral Agent.

“*Undeveloped Property*” means at any time any vacant or undeveloped Property (or portion thereof that constitutes a separate and conveyable parcel, which may include a vacant building) for which there was no positive Modified Cash NOI for the most recently ended four fiscal quarters.

“*Uniform Commercial Code*” means the New York Uniform Commercial Code as in effect from time to time.

“*unit of reference property*” has the meaning specified in Section 13.12(a).

“*U.S. Government Obligations*” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer’s option.

“*U.S. national securities exchange*” means the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the New York Stock Exchange.

“*U.S. Person*” means a U.S. Person as defined in Rule 902(k) under the Securities Act.

“*Valuation Period*” has the meaning specified in Section 13.06(c).

“*Vice President*,” when used with respect to the Company, the REIT or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “Vice President.”

“*Wholly Owned Subsidiary*” means a Subsidiary all the Capital Stock of which (other than directors’ qualifying shares) is owned by the Company or one or more other Wholly Owned Subsidiaries.

SECTION 1.02 Other Definitions.

Term	Defined in Section
“Affiliate Transaction”	Section 4.05
“Appendix”	Section 2.01
“Asset Sale Excess Proceeds Offer”	Section 4.03
“Asset Sale Excess Proceeds Offer Amount”	Section 4.03
“Asset Sale Excess Proceeds Offer Period”	Section 4.03
“Asset Sale Excess Proceeds Offer Price”	Section 4.03
“Asset Sale Excess Proceeds Offer Purchase Date”	Section 4.03
“Asset Sale Excess Proceeds Termination Date”	Section 4.03
“Asset Sale Trigger Event”	Section 4.03
“Bankruptcy Law”	Section 6.01
“CapEx Assets”	Section 4.03
“Collateral Release Excess Proceeds”	Section 4.04
“Collateral Release Excess Proceeds Offer”	Section 4.04
“Collateral Release Excess Proceeds Offer Amount”	Section 4.04
“Collateral Release Excess Proceeds Offer Period”	Section 4.04
“Collateral Release Excess Proceeds Offer Price”	Section 4.04
“Collateral Release Excess Proceeds Offer Purchase Date”	Section 4.04
“Collateral Release Excess Proceeds Termination Date”	Section 4.04
“Company”	Recitals
“covenant defeasance option”	Section 8.01(b)
“Custodian”	Section 6.01
“Event of Default”	Section 6.01
“Excluded Release Trigger Events Proceeds”	Section 4.04
“Guaranteed Obligations”	Section 10.01
“Issue Date Redemption”	Section 3.08
“Issue Date Redemption Cash”	Section 3.08
“legal defeasance option”	Section 8.01(b)
“Mortgaged Property”	Section 1.01
“Paying Agent”	Section 2.03
“Pending Redemption Cash”	Section 4.04
“Pending Use Cash”	Section 4.03
“Permitted Excess Cash Use Assets”	Section 4.03
“Plan of Reorganization”	Recitals
“Recourse Property”	Section 1.01
“Registrar”	Section 2.03

“Related Business Assets”	Section 4.03
“Security Register”	Section 2.03
“Settlement Date”	Section 13.04(a)(v)
“Specified Property”	Section 4.03
“Successor Guarantor”	Section 5.01(b)(2)
“Trigger Release Replacement Property”	Section 4.04

Certain capitalized terms used herein shall have the meanings assigned to them in the Appendix or, with respect to the Collateral Release/Covenant Revision Trigger Date, in Section 4.17.

SECTION 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“*indenture securities*” means the Securities and the Note Guarantees;

“*indenture security holder*” means a Securityholder;

“*indenture to be qualified*” means this Indenture;

“*indenture trustee*” or “*institutional trustee*” means the Trustee; and

“*obligor*” on the Securities and Note Guarantees means the Company, the Guarantors and the REIT, respectively, and any successor obligor upon the Securities, the Note Guarantees and the Limited Guarantee, respectively.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

SECTION 1.04 Rules of Construction. Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) “including” means including without limitation;
- (5) words in the singular include the plural and words in the plural include the singular;
- (6) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;

(7) the principal amount of any Preferred Stock shall be (A) the maximum liquidation value of such Preferred Stock or (B) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater;

(8) all references to the date the Securities were originally issued shall refer to the Issue Date;

(9) this Indenture shall not treat (A) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (B) Senior Indebtedness as subordinated or junior to any other Senior Indebtedness merely because it has a junior priority with respect to the same collateral or because it is guaranteed by other obligors;

(10) provisions apply to successive events and transactions;

(11) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole (as amended or supplemented from time to time) and not to any particular Article, Section or other subdivision of this Indenture;

(12) any reference to “duly provided for” and other words of similar import with respect to any amount of property required to be paid or delivered, as applicable, shall include, without limitation, having made such amount or property available for payment or delivery;

(13) unless otherwise provided in this Indenture or in any Security, the words “execute”, “execution”, “signed”, and “signature” and words of similar import used in or related to any document to be signed in connection with this Indenture, any Security or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other similar state laws based on the Uniform Electronic Transactions Act, provided that, notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to procedures approved by the Trustee; and

(14) the terms “given”, “mailed”, “notify” or “sent” with respect to any notice to be given to a Holder pursuant to this Indenture, shall mean notice (x) given to the Depository (or its designee) pursuant to the Applicable Procedures (in the case of a Global Security) or (y) mailed to such Holder by first class mail, postage prepaid, at its address as it appears on the Security Register (in the case of a Definitive Security), in each case, in accordance with Section 16.02. Notice so “given” shall be deemed to include any notice to be “mailed” or “delivered,” as applicable, under this Indenture.

ARTICLE 2
The Securities

SECTION 2.01 Form and Dating.

Certain provisions relating to the Securities are set forth in the Appendix attached hereto (the “*Appendix*”), which is hereby incorporated in, and expressly made a part of, the Indenture. The Securities and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A, which is hereby incorporated in, and expressly made a part of, this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company or any Guarantor is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Security shall be dated the date of its authentication. The Securities shall be in minimum denominations of \$1.00 and integral multiples of \$1.00 thereof. The terms and provisions contained in the Securities shall constitute, and are hereby expressly made, a part of this Indenture and each of the Company, the Guarantors, the REIT and the Trustee, by their execution and delivery of this Indenture, expressly agrees to such terms and provisions and to be bound thereby. However, to the extent any provision of any Security conflicts with the express provisions of the Indenture, the provisions of this Indenture shall govern and be controlling.

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is limited to \$150,000,000, and the Company may not “re-open” this Indenture to issue additional Securities after the Issue Date, in each case, except for Securities issued upon registration of transfer of, or exchange for, or in lieu of other Securities pursuant to Sections 2.06, 2.07, 2.09, 3.06, 4.03, 4.04, 9.05, 13.03(b) or 14.02(c) or pursuant to Sections 2.3 or 2.4 of the Appendix.

SECTION 2.02 Execution and Authentication. An Officer of the Company shall sign the Securities for the Company by manual, facsimile or other electronic signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The manual signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall, upon the written direction of the Company, authenticate and make available for delivery Securities, as set forth in Section 2.2 of the Appendix.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate the Securities. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Company. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 2.03 Registrar and Paying Agent. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange for other Securities (the “*Registrar*”) and an office or agency where Securities may be presented for payment (the “*Paying Agent*”) or for exchange for Common Stock (the “*Exchange Agent*”). The Registrar shall keep a register (the “*Security Register*”) of the Securities and of their transfer and exchange. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional exchange agents. The term “Registrar” includes any co-registrar; the term “Paying Agent” includes any additional paying agent; and the term “Exchange Agent” includes any additional exchange agent.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Exchange Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any Wholly Owned Subsidiary incorporated or organized within the United States of America may act as Paying Agent, Exchange Agent, Registrar, co-registrar or transfer agent.

The Company initially appoints the Trustee as Registrar, Paying Agent and Exchange Agent in connection with the Securities and the Trustee accepts such appointment as the initial Registrar, Paying Agent and Exchange Agent.

The Company may remove any Registrar, Paying Agent or Exchange Agent upon written notice to such Registrar, Paying Agent or Exchange Agent and to the Trustee; provided, however, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Registrar, Paying Agent or Exchange Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar, Paying Agent or Exchange Agent until the appointment of a successor in accordance with clause (i) above. The Registrar, Paying Agent or Exchange Agent may resign at any time upon written notice to the Company and the Trustee, in which case the Trustee shall serve as Registrar, Paying Agent or Exchange Agent until the appointment of a successor; provided, however, that the Trustee may resign as Paying Agent, Exchange Agent or Registrar only if the Trustee also resigns as Trustee in accordance with Section 7.08.

With respect to any Global Securities, the Corporate Trust Office of the Trustee shall be the office of agency where such Global Securities may be presented or surrendered for payment or for registration of transfer or exchange, or where successor Securities may be delivered in exchange therefor; provided, however, that any such presentation, surrender or delivery effected pursuant to the Applicable Procedures of the Depository shall be deemed to have been effected at such office or agency in accordance with the provisions of this Indenture.

Whenever any Security is held by a Holder that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, then it is the intention of the Company and such Holder that (x) all interest accrued and paid on such Security will be eligible to qualify for exemption from United States withholding tax (excluding United States withholding tax imposed

by Sections 1471 through 1474 of the Code (“*FATCA*”)) as “portfolio interest” because such Security is an obligation which is in “registered form” within the meaning of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code (or any successor provision thereto) and the applicable Treasury Regulations promulgated thereunder, and (y) as such, to the extent the requirements relating to the “portfolio interest” exemption are satisfied, all interest accrued and paid on this Security will be exempt from United States information reporting under Sections 6041 and 6049 of the Code and United States backup withholding under Section 3406 of the Code. The Company (or its agents), on the one hand, and the applicable Holder, on the other, shall reasonably cooperate with one another, and execute and file such forms or other documents, or do or refrain from doing such other acts, as may be required, to secure exemption from United States withholding tax (including *FATCA*), information reporting, and backup withholding, as applicable. In furtherance of the foregoing, any Holder, transferee or assignee Holder may from time to time provide (x) any applicable U.S. Internal Revenue Service (“*IRS*”) Form W-9, W-8BEN, W-8BEN-E, W-8ECI or W-8IMY (with any applicable attachments) or applicable successor form, and (y) to the extent such Holder, transferee or assignee Holder, or the beneficial owner of the Security, as applicable, is not a United States person and is claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate reasonably satisfactory to the Company to the effect that such Holder, transferee or assignee Holder, or the beneficial owner of the Security, as applicable, is not (i) a “10-percent shareholder” of the Company within the meaning of Section 871(h)(3)(B) of the Code, (ii) a “controlled foreign corporation” related to the Company as described in Section 881(c)(3)(C), or (iii) a “bank” extending credit to the Company in the ordinary course of its trade or business as described in Section 881(c)(3)(A). The Company shall take into account such documentation in good faith.

SECTION 2.04 Paying Agent to Hold Money in Trust. Prior to each due date of the principal and interest or premium on any Security, the Company shall deposit with the Paying Agent (or if the Company or a Wholly Owned Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest and premium, when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders and the Trustee and the Collateral Agent all money held by the Paying Agent for the payment of principal of or cash interest on the Securities and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the Trustee. Upon any Event of Default specified in Section 6.01(6) or (7), the Trustee shall automatically serve as the Paying Agent for the Securities.

SECTION 2.05 Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of

the names and addresses of Securityholders and the Company shall otherwise comply with TIA § 312(a).

SECTION 2.06 Transfer and Exchange. The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer in compliance with the Appendix. When a Security is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of this Indenture and Section 8-401(a) of the Uniform Commercial Code are met. When Securities are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges for other Securities, the Company shall execute and the Trustee shall authenticate Securities at the Company's request. The Company may require the Securityholders to make a payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges not involving any transfer pursuant to Sections 2.06, 2.07, 2.09, 3.06, 4.03, 4.04, 9.05, 13.03(b) and 14.02(c) of this Indenture or Sections 2.3 or 2.4 of the Appendix). The Company shall not be required to make and the Registrar need not register transfers or exchanges for other Securities of (i) any Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or (ii) any Securities for a period of 15 days before a selection of Securities to be redeemed or 15 days before an Interest Payment Date.

Prior to the due presentation for registration of transfer of any Security, the Company, the REIT, the Guarantors, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Company, the REIT, the Guarantors, the Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

Any holder of a beneficial interest in a Global Security shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in the Global Security may be effected only through a book-entry system maintained by (a) the holder of such Global Security (or its agent) or (b) any holder of a beneficial interest in such Global Security, and that ownership of a beneficial interest in such Global Security shall be required to be reflected in a book entry.

All Securities issued upon any transfer or exchange for other Securities pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

SECTION 2.07 Replacement Securities. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee, upon the Company's written instruction, shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met and the Holder (a) satisfies the Company and the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking

and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Company and the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code and (c) satisfies any other reasonable requirements of the Company, the REIT, the Guarantors and the Trustee. If required by the Trustee or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company to protect the Company, the REIT, the Guarantors, the Trustee, the Paying Agent, the Registrar and any co-registrar and in the judgment of the Trustee to protect the Trustee, the Paying Agent, the Registrar and any of the Trustee's agents from any loss which any of them may suffer if a Security is replaced. The Company and the Trustee may charge the Holder for their expenses in replacing a Security (including without limitation attorneys' fees and disbursements in replacing such Security). Every replacement Security is an additional Obligation of the Company.

The provisions of this Section 2.07 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Securities.

SECTION 2.08 Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation and those described in this Section as not outstanding. Subject to Section 16.06, a Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or repurchase date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or repurchased or maturing, as the case may be, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.09 Temporary Securities. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the Company, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities.

SECTION 2.10 Cancellation. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, the Paying Agent and the Exchange Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange for

other Securities or payment or exchange for Common Stock. The Trustee and no one else shall cancel and destroy (subject to the record retention requirements of the Exchange Act) all Securities surrendered for registration of transfer, exchange for other Securities, payment or exchange for Common Stock or cancellation in accordance with the Trustee's customary procedures and, upon written request, deliver a certificate of such destruction to the Company. The Company may not issue new Securities to replace Securities it has redeemed, paid, exchanged for Common Stock or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of cancelled Securities other than pursuant to the terms of this Indenture.

SECTION 2.11 Defaulted Interest. If the Company defaults in a payment of interest on the Securities, the Company shall pay defaulted interest at the rate per annum shown on the Security (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the persons who are Securityholders on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date and shall promptly deliver or cause to be delivered to each affected Securityholder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

SECTION 2.12 CUSIP Numbers, ISINs, etc. The Company in issuing the Securities may use "CUSIP" numbers and ISINs (in each case if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers and ISINs in notices as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice shall not be affected by any defect in or omission of such numbers. The Company shall advise the Trustee in writing of any change in any "CUSIP" numbers or ISINs applicable to the Securities.

SECTION 2.13 Calculation of Specified Percentage of Securities. With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Securities, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of the Securities, the Holders of which have so consented by (b) the aggregate principal amount, as of such date of determination, of the Securities then outstanding, in each case, as determined in accordance with Section 2.08 and Section 16.06 of this Indenture. Any such calculation made pursuant to this Section 2.13 shall be made by the Company and delivered to the Trustee in an Officer's Certificate. The Trustee may rely conclusively on the calculations and information provided to them by the Company in such certificates, and will have no responsibility to make calculations under this Indenture.

SECTION 2.14 Withholding. Notwithstanding anything to the contrary herein, at the Maturity Date, upon earlier repurchase of the Securities or at any time a payment is made with respect to the Securities, and as otherwise required by law, the Company, the Trustee, the Paying Agent or the Exchange Agent (as applicable) may deduct and withhold from any amounts otherwise payable to the Holder the amounts required to be deducted and withheld under applicable law, and such deducted or withheld amounts shall be deemed paid to such Holder for all purposes of this Indenture.

ARTICLE 3
Redemption

SECTION 3.01 Notices to Trustee. If the Company elects to redeem Securities pursuant to Section 3.07(b), the Company shall notify the Trustee in writing of the redemption date and the principal amount of Securities to be redeemed.

The Company shall give the notice to the Trustee provided for in this Section at least 15 days before the redemption date unless the Trustee consents to a shorter period. Such notice shall be accompanied by an Officer's Certificate from the Company to the effect that such redemption will comply with the conditions herein. Any such notice to the Trustee may be cancelled by the Company at any time prior to the mailing of notice of redemption to the Holders and shall thereby be void and of no effect.

SECTION 3.02 Selection of Securities To Be Redeemed. If fewer than all the Securities are to be redeemed pursuant to the notice sent pursuant to Section 3.03, the Trustee shall select the Securities to be redeemed pro rata to the extent practicable or otherwise in accordance with the Applicable Procedures of the Depository. The Trustee shall make the selection from outstanding Securities not previously called for redemption or surrendered for exchange. Securities and portions of them the Trustee selects shall be in principal amounts of \$1.00 or whole multiples of \$1.00. If any Security selected for partial redemption is surrendered for a Holder-elected exchange in part after such selection, the portion of the Security surrendered for such Holder-elected exchange shall be deemed (so far as may be possible) to be the portion selected for redemption. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

SECTION 3.03 Notice of Redemption. At least 10 days but not more than 60 days before a date for redemption of Securities pursuant to Section 3.07(b), the Company shall send a notice of redemption to each Holder whose Securities are to be redeemed. Such notice shall be sent to such Holder's registered address (with a copy to the Trustee), except that redemption notices may be mailed or otherwise delivered more than 60 days prior to the redemption date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of this Indenture pursuant to Article VIII.

The notice shall identify the Securities to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price;
- (3) the name and address of the Paying Agent;
- (4) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (5) if fewer than all the outstanding Securities are to be redeemed, the identification and principal amounts of the particular Securities to be redeemed and the

aggregate principal amount of Securities to be outstanding after such partial redemption, and that on and after the redemption date, upon surrender of any Security to be redeemed only in part, a new Security in principal amount equal to the unredeemed portion thereof shall be issued;

(6) that unless the Company defaults in making such redemption payment, on the redemption date, the redemption price will become due and payable upon each Security or portion thereof to be redeemed and that interest on the Securities (or portion thereof) called for redemption will cease to accrue on and after the redemption date and the only remaining right of the Holders of such Securities on and after the redemption date is to receive payment of the redemption price upon surrender to the Paying Agent of the Securities redeemed;

(7) that a Holder of a Security to be redeemed has the right to exchange such Security pursuant to Section 13.05 until the close of business on the Scheduled Trading Day prior to the redemption date unless the Company fails to pay the redemption price (in which case a Holder may exchange such Security until the redemption price has been paid or duly provided for);

(8) the Settlement Method then in effect;

(9) the “exchange amount” on the Scheduled Trading Day prior to the redemption date applicable to each \$1,000 principal amount of a Security;

(10) the Exchange Rate on the Scheduled Trading Day prior to the redemption date;

(11) in respect of any such Holder-elected exchange prior to the close of business on the Scheduled Trading Day prior to the redemption date, the place or places where such Securities are to be surrendered for such exchange;

(12) in respect of any such Holder-elected exchange prior to the close of business on the Scheduled Trading Day prior to the redemption date, the procedures an exchanging Holder must follow to so exchange its Securities;

(13) the “CUSIP” number, ISIN or “Common Code” number, if any, printed on the Securities being redeemed; and

(14) that no representation is made as to the correctness or accuracy of the “CUSIP” number, ISIN, or “Common Code” number, if any, listed in such notice or printed on the Securities.

At the Company’s request made at least five (5) Business Days prior to the date on which notices of redemption are to be sent (or such shorter period as may be agreed by the Trustee), the Trustee shall deliver the notice of redemption to the Holders in the Company’s name and at the Company’s expense. In such event, the Company shall provide the Trustee with the information required by this Section.

Any notice of redemption of Securities shall be irrevocable and shall not be subject to any conditions.

SECTION 3.04 Effect of Notice of Redemption. Once a notice of redemption is sent pursuant to Section 3.03, Securities called for redemption become due and payable on the redemption date and at the redemption price stated in the notice and from and after such redemption date (unless the Company defaults in the payment of the redemption price and accrued and unpaid interest), such Securities will cease to bear interest. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price stated in the notice, plus accrued interest to but not including the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the related Interest Payment Date), and such Securities shall be cancelled by the Trustee. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.05 Deposit of Redemption Price. Prior to 11:00 A.M. New York City time on the redemption date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued and unpaid interest on all Securities or portions thereof to be redeemed on that date other than Securities or portions of Securities called for redemption which have been delivered by the Company to the Trustee for cancellation.

SECTION 3.06 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company's expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

SECTION 3.07 No Mandatory Redemption; Optional Redemption.

(a) The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Securities. Except as set forth under Section 4.03 or Section 4.04 and in Article 14, the Company shall not be required to repurchase the Securities at the option of the Holders.

(b) On or after [August 15],⁶ 2028, the Company may redeem the Securities at its sole option, at any time, in whole or in part, upon not less than 10 nor more than 60 days' notice, at a redemption price equal to 100% of the principal amount of the Securities to be redeemed plus interest accrued thereon to but not including the redemption date (provided that interest payments due on or prior to the redemption date will be paid to the record Holders of such Securities on the relevant record date).

(c) Except upon a Company Optional Exchange as to which the Company has elected Cash Settlement effected in accordance with Article 15 or pursuant to Section 3.07(b), the Company shall not be entitled to redeem or otherwise prepay the Securities at the Company's option at any time.

⁶ NTD: To be 90 days prior to the Stated Maturity.

(d) Any optional redemption pursuant to Section 3.07(b) shall be made in compliance with the provisions of Section 3.01 through Section 3.06 hereof.

SECTION 3.08 Mandatory Issue Date Redemption of Other Secured Notes. On [November 8, 2021], the Company shall mandatorily redeem \$60.0 million aggregate principal amount of the Other Secured Notes (the “*Issue Date Redemption*”) at a redemption price equal to (i) 100% of the principal amount of the Other Secured Notes redeemed, plus (ii) accrued and unpaid interest to but excluding the redemption date of [November 8], 2021. In addition, (x) no later than the Issue Date, the Company shall cause cash in the amount of \$60.0 million (the “*Issue Date Redemption Cash*”) such amount being equal to the sum of (i) \$50.0 million in proceeds of the issuance of the New Money Convertible Notes referred to in the Plan of Reorganization and (ii) \$10.0 million in proceeds from the sale approved by the Bankruptcy Court on September 10, 2021 of the Pearland Town Center – Residences, in each case, to be deposited directly by the Company in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and (y) the Issue Date Redemption Cash will constitute Collateral pending application to the redemption of the Other Secured Notes in the Issue Date Redemption on [November 8], 2021.

ARTICLE 4 **Covenants**

SECTION 4.01 Payment of Securities. The Company shall pay the principal of, and premium, if any, and interest on the Securities (including, if applicable, any Fundamental Change Purchase Price, Asset Sale Excess Proceeds Offer Price or Collateral Release Excess Proceeds Offer Price in respect thereof) and shall pay or deliver, as applicable, any Settlement Amounts thereon, in each case on the dates and in the manner provided in the Securities and in this Indenture. Principal of, and premium, if any, and interest on any Securities (including, if applicable, any Fundamental Change Purchase Price, Asset Sale Excess Proceeds Offer Price or Collateral Release Excess Proceeds Offer Price in respect thereof) and Settlement Amounts on any Securities, in each case shall be considered paid or delivered, as applicable, on the date due if on such date the Trustee, the Paying Agent or the Exchange Agent (if, in the case of a Paying Agent or Exchange Agent, other than the Company, the REIT or a Subsidiary thereof) holds in accordance with this Indenture money in immediately available funds sufficient to pay all principal of, and premium, if any, and interest on the Securities (including, if applicable, any Fundamental Change Purchase Price, Asset Sale Excess Proceeds Offer Price or Collateral Release Excess Proceeds Offer Price in respect thereof) and all Settlement Amounts on the Securities (or, in the case of Settlement Amounts for Physical Settlement, shares of Common Stock sufficient to effect delivery of all Settlement Amounts on the Securities).

The Company shall pay interest on overdue principal (including, if applicable, any overdue Fundamental Change Purchase Price, Asset Sale Excess Proceeds Offer Price or Collateral Release Excess Proceeds Offer Price) at the rate specified therefor in the Securities and on any overdue Settlement Amounts at the same rate, and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

SECTION 4.02 Limitation on Indebtedness. (a) The Company shall not, and shall not permit any of its Subsidiaries to, Incur, directly or indirectly, any Indebtedness.

(b) Notwithstanding Section 4.02(a), the Company and its Subsidiaries shall be entitled to Incur or cause or permit the Incurrence of any or all of the following Indebtedness:

(1) (a)(i) the Securities issued on the Issue Date and (ii) the Other Secured Notes issued under the Other Secured Notes Indenture on the Issue Date and (b) Guarantees of Indebtedness Incurred under the Securities and the Other Secured Notes Indenture; provided that the principal amounts of Indebtedness permitted to be Incurred under this clause (1) shall be reduced by the principal amount of any Securities and Other Secured Notes that are repurchased or redeemed or exchanged for Capital Stock of the REIT pursuant to the terms of this Indenture and the Other Secured Notes Indenture;

(2) Indebtedness outstanding on the Issue Date that has been Incurred by a Subsidiary that owns (directly or indirectly) any Property set forth in Category 4 on Annex I hereto;

(3) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary that directly owns solely any Property set forth in Category 3 on Annex I hereto and (y) secured by assets of such Subsidiary, solely to the extent of a Permitted Lien on such Excluded Property and on the Capital Stock of such Subsidiary, if required pursuant to the terms of such Indebtedness, incurred pursuant to clause (2) of the definition of Permitted Liens; provided that any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(4) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary that directly owns solely any Property set forth in Category 1 on Annex I hereto and (y) secured by assets of such Subsidiary, solely to the extent of a Permitted Lien on such Excluded Property and on the Capital Stock of such Subsidiary, if required pursuant to the terms of such Indebtedness, incurred pursuant to clause (2) of the definition of Permitted Liens; provided that (i) any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04, (ii) the aggregate amount of such Non-Recourse Mortgage Indebtedness Incurred after the Issue Date (including any Refinancing Indebtedness Incurred in respect thereto) shall not exceed \$100,000,000 at any time outstanding and (iii) the loan-to-value ratio of any such Non-Recourse Mortgage Indebtedness Incurred (including any Refinancing Indebtedness Incurred in respect thereto) on any individual Property as determined by an independent mortgage appraisal conducted on behalf of and for the benefit of the lender(s) of such Non-Recourse Mortgage Indebtedness shall be at least 50%;

(5) [Reserved];

(6) [Reserved];

(7) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary that directly

owns solely any Property set forth in Category 8 on Annex I hereto or that directly owns solely the Capital Stock in such Subsidiary that ceases to be Collateral Property (and becomes Excluded Released Property pursuant to clause (1) of the definition of Excluded Released Property) and (y) secured by assets of such Subsidiary that directly owns solely any Property set forth in Category 8 on Annex I hereto and on the Capital Stock in such Subsidiary, solely to the extent of a Permitted Lien on such Excluded Released Property incurred pursuant to clause (1) of the definition of Excluded Released Property;

(8) with respect to an Excluded Non-Guarantor Subsidiary owning Capital Stock in a Joint Venture that owns solely any Property set forth in Category 4 or Category 7 on Annex I hereto, Indebtedness (including in connection with any refinancing of the underlying Indebtedness) (x) constituting a Guarantee by such Subsidiary of Indebtedness Incurred by such Joint Venture to the extent the Capital Stock of such Joint Venture is Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock; and (y) secured by the Capital Stock held by such Subsidiary in such Joint Venture solely to the extent of a Permitted Lien on such Excluded Property incurred pursuant to clause (2) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(9) Refinancing Indebtedness that is Non-Recourse Mortgage Indebtedness (x) incurred by a Subsidiary that owns solely any Property set forth in Category 4 on Annex I hereto and is an Excluded Initial Property and (y) secured solely by a Permitted Lien on such Excluded Initial Property incurred pursuant to clause (3) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(10) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Subsidiary at the time such Subsidiary acquires solely any Excluded After-Acquired Property and (y) secured solely by a Permitted Lien on such Excluded After-Acquired Property incurred pursuant to clause (4) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(11) Subordinated Obligations of the Company or any of its Subsidiaries if, on the date of such Incurrence and after giving effect thereto on a pro forma basis, the Debt Service Ratio exceeds 1.375 to 1 for the most recently ended four fiscal quarters;

(12) Indebtedness of the Company or of any of its Subsidiaries in an aggregate principal amount which, when taken together with all other Indebtedness of the Company and its Subsidiaries outstanding under this clause (12) on the date of such Incurrence, does not exceed \$75 million at any one time outstanding;

(13) [Reserved];

(14) Recourse Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) in an aggregate principal amount not to exceed \$300.0 million at any one time outstanding;

(15) (A) Acquired Debt; provided that on the date of such Incurrence after giving effect to such acquisition on a pro forma basis, either (i) the Debt Service Ratio exceeds 1.375 to 1 for the most recently ended four fiscal quarters or (ii) the Debt Service Ratio is no worse than such ratio immediately prior to such acquisition and (B) Refinancing Indebtedness Incurred in respect thereto;

(16) Hedging Obligations not entered into for speculative purposes;

(17) Indebtedness Incurred in connection with any Sale and Leaseback Transaction;

(18) unsecured Indebtedness of the Company to any Subsidiary or Indebtedness of any Subsidiary to the Company or another Subsidiary; provided that if the Company or a Subsidiary Guarantor Incurs Indebtedness to a Subsidiary that is not a Subsidiary Guarantor (except in respect of intercompany current liabilities Incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of the Company and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Obligations of the Company or such Subsidiary Guarantor in respect of the Securities;

(19) Indebtedness constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(20) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred in connection with the Plan of Reorganization or any other acquisition or disposition of any business, assets or a Subsidiary in accordance with the terms of this Indenture, other than, for the avoidance of doubt, guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(21) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(22) obligations (including reimbursement obligations with respect to letters of credit and bank guarantees) in respect of performance, bid, appeal and surety bonds and completion guarantees and similar obligations provided by the Company or any of its

Subsidiaries in the ordinary course of business or consistent with past practice or industry practice; and

(23) Indebtedness in respect of any ordinary course cash management activities of the Company and its Subsidiaries.

(c) Notwithstanding Section 4.02(b), neither the Company nor any Subsidiary shall Incur any Indebtedness pursuant to Section 4.02(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Company or any Subsidiary unless such Indebtedness shall (i) not be secured by a Lien on any property or asset and (ii) be subordinated in right of payment to the Securities or the applicable Note Guarantee to at least the same extent as such Subordinated Obligations.

(d) For purposes of determining compliance with this Section 4.02, a Guarantee by the Company or a Subsidiary of Indebtedness Incurred by the Company or a Subsidiary, as applicable, shall not be a separate Incurrence of Indebtedness for purposes of calculating any amount of Indebtedness. For purposes of determining compliance with this Section 4.02, accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of deferred financing costs or original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or Preferred Stock, in the form of additional shares of Disqualified Stock or Preferred Stock, and the accretion or amortization of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, shall, in each case, not be deemed to be an Incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock.

SECTION 4.03 Limitation on Asset Sales.

The Company will not, and will not permit any of its Subsidiaries to, consummate an Asset Sale (including a Collateral Disposition), unless:

(1) the Company (or the Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Capital Stock issued or sold or otherwise disposed of; provided, that in the case of a Collateral Disposition of any Property set forth in Category 1 on Annex I hereto (or Capital Stock of a Subsidiary that, directly or indirectly, owns any such Property), the Company (or the Subsidiary) receives consideration at the time of the Asset Sale that is at least equal to the greater of (i) the release price of such Property set forth on Annex II hereto and (ii) the Fair Market Value of the Collateral sold or otherwise disposed of;

(2) at least 75% of the consideration received in the Asset Sale (other than an Asset Sale of Properties set forth in Category 4 on Annex I hereto that are owned by a Subsidiary of the Company and Category 8 on Annex I hereto) by the Company or such Subsidiary is in the form of cash or cash equivalents;

(3) funds in an amount equal to the Net Available Cash are deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent

free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien); and

(4) in the case of an Asset Sale of Capital Stock of a Subsidiary, such Asset Sale constitutes a disposition of all Capital Stock of such Subsidiary owned by the Company or any Subsidiary;

provided, that any Collateral Disposition constituting any Event of Loss, loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title to or use of Collateral shall not be required to satisfy the conditions set forth in clauses (1) or (2) of this paragraph.

For the purposes of this Section 4.03, the following are deemed to be cash or cash equivalents:

(1) solely in the case of an Asset Sale not constituting a Collateral Disposition of Property Collateral, the assumption or discharge of Indebtedness of the Company or of a Guarantor (other than unsecured Indebtedness, Junior Lien Debt, contingent liabilities and liabilities that are by their terms subordinated in right of payment to the Notes or any Subsidiary Guarantee and obligations in respect of Disqualified Stock of the Company) or any Indebtedness of any Subsidiary that is not a Guarantor (other than obligations in respect of Disqualified Stock of such Subsidiary) and the release of the Company, such Guarantor or such Subsidiary from all liability on such Indebtedness in connection with such Asset Sale;

(2) in the case of an Asset Sale of a Property set forth in Category 3, Category 4 or Category 7 on Annex I hereto by the Subsidiary or Joint Venture owning such Property, the principal amount of any Indebtedness of such Subsidiary or Joint Venture repaid with the proceeds of such Asset Sale solely to the extent such Indebtedness has been incurred pursuant to Section 4.02(b)(3), (8), or (9) and has been secured by a Permitted Lien on such Property and on the Capital Stock in such Subsidiary incurred pursuant to clause (2) of the definition of Permitted Liens; and

(3) any securities, notes or other obligations received by the Company or any Subsidiary from the transferee that are promptly converted by the Company or such Subsidiary into cash within 180 days of the closing of such Asset Sale, to the extent of cash received in that conversion.

The Company will not permit any Subsidiary to issue any Capital Stock of such Subsidiary to, or otherwise permit any such Capital Stock to be owned by, any Person other than the Company or any Subsidiary Guarantor, except upon a Collateral Disposition of all such Capital Stock to such a Person that complies with this Section 4.03.

Pending the final application of any Net Available Cash from an Asset Sale (including a Collateral Disposition but excluding any Asset Sale of a Property, or of the Capital Stock of a Subsidiary solely owning a Property, set forth in Category 8 on Annex I hereto) or a Joint Venture Disposition, upon the receipt by the Company or a Subsidiary of the Net Available Cash attributable to an Asset Sale or a Joint Venture Disposition, the Company shall cause, or shall cause such Subsidiary to cause, such amounts (such amounts, the "*Pending Use Cash*") to be

deposited directly by the Company or such Subsidiary in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and the Pending Use Cash will constitute Collateral pending application as a Permitted Excess Cash Use or as hereinafter described.

Within 360 days (or 720 days with respect to an Event of Loss) after the actual receipt of any Net Available Cash by the Company or a Subsidiary from an Asset Sale (including an Event of Loss and a Collateral Disposition but excluding any Asset Sale of a Property, or of the Capital Stock of a Subsidiary solely owning a Property, set forth in Category 8 on Annex I hereto) or a Joint Venture Disposition, the Company (or the applicable Subsidiary, as the case may be) may apply such Net Available Cash (each such application a “*Permitted Excess Cash Use*”):

(A) to acquire all or substantially all of the assets of, or any Capital Stock of, another Related Business, if, after giving effect to any such acquisition of Capital Stock, the Related Business is or becomes a Subsidiary of the Company (such assets or Capital Stock, “*Related Business Assets*”);

(B) to make a capital expenditure to construct or improve assets used or useful in a Related Business (such assets, “*CapEx Assets*”);

(C) to acquire other Additional Assets (such Related Business Assets, CapEx Assets, Additional Assets or Specified Property referenced in clauses (A), (B), (C) and (E), collectively, the “*Permitted Excess Cash Use Assets*”);

(D) to fund distributions to qualify, or maintain the qualification of the REIT or any other parent of the Company, as a real estate investment trust for U.S. federal income tax purposes as such Permitted Excess Cash Use in this clause (D) is approved in good faith by the Boards of Directors of both the Company and the REIT; provided that (x) the amount required to fund distributions shall take into account the extent to which the REIT may issue stock dividends that qualify for deduction under Code Section 561(a); (y) the aggregate cash amount under this clause (D) does not exceed \$10 million in any calendar year; and (z) no Event of Default shall have occurred and be continuing or would occur as a consequence thereof; or

(E) to repay at a discount any Non-Recourse Mortgage Indebtedness or Recourse Indebtedness of any Excluded Non-Guarantor Subsidiary owning any Property that immediately prior to such repayment does not constitute Collateral (such Property, “*Specified Property*”) to the extent such Permitted Excess Cash Use in this clause (E) is approved in good faith by the Boards of Directors of both the Company and the REIT; provided that (x) as a result of such repayment, such Non-Recourse Mortgage Indebtedness or Recourse Indebtedness is satisfied and discharged in its entirety and, simultaneously with such repayment, all Liens on such Specified Property and any other property or assets of the Company or any Subsidiary securing such Indebtedness are released, (y) such Specified Property shall be deemed listed under Category 1 on Annex I hereto, and the Company shall

promptly deliver to the Collateral Agent the documents and certificates required by Section 4.14 and Article 11 of this Indenture and (z) no Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

provided that (y) in the case of a Collateral Disposition of any Property set forth in Category 1 on Annex I hereto, the amount of Net Available Cash from such Collateral Dispositions after the Issue Date that is applied to any one or more Permitted Excess Cash Use Assets that are not deemed listed under “Category 1” on Annex I hereto pursuant to Section 4.14 shall not exceed \$75.0 million in the aggregate, and (z) in the case of clauses (A), (B), (C) or (E), prior to or simultaneously with or within ten (10) Business Days after the acquisition or capital expenditure to construct or improve (or in the case of clause (E), the repayment of Indebtedness previously secured by) such Permitted Excess Cash Use Assets (or 45 days in the case of a mortgage), (i)(x) the Subsidiary owning such Permitted Excess Cash Use Assets (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (y) the Collateral Agent has been granted a valid, enforceable perfected first-priority security interest (subject only to Permitted Collateral Liens) in such Permitted Excess Cash Use Assets in accordance with Section 4.14 and (ii) in the manner specified in Section 11.02(c) and Section 11.04(e) of this Indenture, the Company or such Subsidiary Guarantor shall have executed and delivered to the Collateral Agent such Security Documents referred to therein or as shall otherwise be reasonably necessary to vest in the Collateral Agent a valid, enforceable perfected security interest or other Liens in or on such Permitted Excess Cash Use Assets and to have such Permitted Excess Cash Use Assets added to the Collateral, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions, if any) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents and an Officer’s Certificate and Opinion of Counsel as to the satisfaction of the foregoing requirements (such Opinions of Counsel and Officer’s Certificate also to be delivered to the Trustee); and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such Permitted Excess Cash Use Assets to the same extent and with the same force and effect.

Any Net Available Cash from any Asset Sale (including any Collateral Disposition but excluding any Asset Sale of a Property, or of the Capital Stock of a Subsidiary solely owning a Property, set forth in Category 8 on Annex I hereto) or a Joint Venture Disposition that is not applied as provided in, and within the time period set forth in, the preceding paragraph of this Section 4.03 will constitute “*Asset Sale Excess Proceeds*.” When the aggregate amount of Asset Sale Excess Proceeds exceeds \$50.0 million (any aggregate amount of Asset Sale Excess Proceeds first exceeding such threshold amount being referred to as an “*Asset Sale Trigger Event*”), within ten Business Days thereof, the Company will (x) make an Asset Sale Excess Proceeds Offer to all Holders of Securities to purchase the maximum principal amount of Securities that may be purchased at the Asset Sale Excess Proceeds Offer Price in an amount equal to the portion of such Asset Sale Excess Proceeds equal to the sum of (i) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (ii) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer and (y) substantially concurrently therewith effect an Asset Sale Excess Proceeds Other Offer with respect to the Other Secured Notes in accordance with the Other Secured Notes Indenture. “*Asset Sale Excess Proceeds Offer Price*” means, as to any Securities to be purchased in any Asset Sale Excess Proceeds Offer, (i) an amount equal to 102% for Assets Sales of Collateral

(other than any Event of Loss), (ii) an amount equal to 100% for Asset Sales of non-Collateral and (iii) an amount equal to 100% for Asset Sales constituting Events of Loss, in the case of each of clauses (i), (ii) and (iii), of the principal amount of the Securities plus accrued and unpaid interest, if any, to the Asset Sale Excess Proceeds Offer Purchase Date (subject to the right of Holders of record on the relevant record date to receive interest due on an Interest Payment Date that is on or prior to the Asset Sale Excess Proceeds Offer Purchase Date). Such Asset Sale Excess Proceeds Offer will be payable in cash. For the avoidance of doubt, the Asset Sale Excess Proceeds Offer Price set forth in this paragraph shall override the optional redemption price set forth in Section 3.07(b) of this Indenture. The Company may, at its option, satisfy the foregoing obligations with respect to an Asset Sale Excess Proceeds Offer prior to the expiration of the applicable 360 day or 720 day period or prior to receiving more than \$50.0 million of Asset Sales Excess Proceeds.

On the Asset Sale Excess Proceeds Offer Purchase Date, the Company will deposit with the Paying Agent and the paying agent under the Other Secured Notes Indenture, respectively, such amount as will enable (i) the Trustee, to the extent of the Securities tendered in such Asset Sale Excess Proceeds Offer, to apply the portion of such Asset Sale Excess Proceeds equal to the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (y) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer to the repurchase, at the applicable Asset Sale Excess Proceeds Offer Price, of Securities validly tendered and accepted for purchase in the Asset Sale Excess Proceeds Offer and (ii) the Other Secured Notes Trustee, to the extent of Other Secured Notes validly tendered and accepted for purchase in the Asset Sale Excess Proceeds Other Offer, apply the portion of such Asset Sale Excess Proceeds equal to the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Other Offer applicable to the Other Secured Notes plus (y) the Asset Sale Excess Proceeds Securities Unused Amount. For the avoidance of doubt, the Company's making of any Asset Sale Excess Proceeds Offer shall not constitute a redemption of Securities pursuant to Article 3 or paragraph 5 of the Securities.

If any Asset Sale Excess Proceeds remain after consummation of an Asset Sale Excess Proceeds Offer and the related Asset Sale Excess Proceeds Other Secured Notes Offer, the Company may use those Asset Sale Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate Asset Sale Excess Proceeds Offer Price payable with respect to the aggregate principal amount of Securities tendered into such Asset Sale Excess Proceeds Offer exceeds the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (y) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer, the Trustee will select the Securities to be purchased on a *pro rata* basis on the basis of the aggregate principal amount of validly tendered Securities. Upon surrender of a Security that is repurchased in part, the Company shall issue in the name of the applicable Holder and the Trustee shall authenticate for such Holder at the expense of the Company a new Security equal in principal amount to the non-repurchased portion of the Security surrendered. Upon completion of each Asset Sale Excess Proceeds Offer, the amount of Asset Sale Excess Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Securities pursuant to an Asset Sale Excess

Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.03, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions by virtue of such compliance.

In the event that, pursuant to this Section 4.03 hereof, the Company shall be required to commence an offer (an “*Asset Sale Excess Proceeds Offer*”) to all Holders to purchase the maximum principal amount of Securities that may be purchased at the Asset Sale Excess Proceeds Offer Price with an amount equal to the sum of (x) the Pro Rata Percentage Amount with respect to such Asset Sale Excess Proceeds Offer applicable to the Securities plus (y) the Asset Sale Excess Proceeds Other Secured Notes Unused Amount, if any, with respect to such Asset Sale Excess Proceeds Offer (the “*Asset Sale Excess Proceeds Offer Amount*”), the Company shall follow the procedures specified below:

(a) The Asset Sale Excess Proceeds Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the “*Asset Sale Excess Proceeds Offer Period*”). No later than five Business Days after the termination of the Asset Sale Excess Proceeds Offer Period (the “*Asset Sale Excess Proceeds Offer Purchase Date*”), the Company shall purchase and pay the Asset Sale Excess Proceeds Offer Price with respect to all Securities validly tendered and accepted for purchase, or if the amount of Securities validly tendered at the Asset Sale Excess Proceeds Offer Price with respect to all Securities validly tendered is greater than the Asset Sale Excess Proceeds Offer Amount, the Company shall purchase and pay for Securities validly tendered at the Asset Sale Excess Proceeds Offer Price in an aggregate amount equal to the Asset Sale Excess Proceeds Amount. Payment for any Securities so purchased shall be made in the manner prescribed in the Securities.

(b) Upon the commencement of an Asset Sale Excess Proceeds Offer, the Company shall send a notice to each of the Holders with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Asset Sale Excess Proceeds Offer. The Asset Sale Excess Proceeds Offer shall be made to all Holders. The notice, which shall govern the terms of the Asset Sale Excess Proceeds Offer, shall state:

(1) that the Asset Sale Excess Proceeds Offer is being made pursuant to this Section 4.03 hereof, and the length of time the Asset Sale Excess Proceeds Offer shall remain open, including the time and date the Asset Sale Excess Proceeds Offer will terminate (the “*Asset Sale Excess Proceeds Termination Date*”);

(2) the Asset Sale Excess Proceeds Offer Price;

(3) that the aggregate amount to be applied to purchase the Securities in the Asset Sale Excess Proceeds Offer will consist of an amount equal to the Pro Rata Percentage Amount applicable to the Securities (and specifying such amount) plus, depending on the extent to which Other Secured Notes are not tendered in the Asset Sale Excess Proceeds Offer being conducted substantially concurrently with such Asset

Sale Excess Proceeds Offer, an additional amount not to exceed the Pro Rata Percentage Amount applicable to the Other Secured Notes (and specifying such other amount);

(4) that any Security not tendered or accepted for payment shall continue to accrue interest;

(5) that, unless the Company defaults in making such payment, any Security accepted for payment pursuant to the Asset Sale Excess Proceeds Offer shall cease to accrue interest after the Asset Sale Excess Proceeds Offer Purchase Date;

(6) that Holders electing to have a Security purchased pursuant to any Asset Sale Excess Proceeds Offer shall be required to surrender the Security, properly endorsed for transfer, together with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Security completed and such customary documents as the Company may reasonably request, to the Company or a Paying Agent at the address specified in the notice, before the Asset Sale Excess Proceeds Termination Date;

(7) that Holders shall be entitled to withdraw their election if the Company or the Paying Agent, as the case may be, receives, prior to the Asset Sale Excess Proceeds Termination Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased;

(8) that, if the aggregate principal amount of Securities surrendered by Holders at the Asset Sale Excess Proceeds Offer Price exceeds the Asset Sale Excess Proceeds Offer Amount, the Trustee shall select the Securities to be purchased on a pro rata basis on the basis of the aggregate principal amount of validly tendered Securities (with such adjustments as may be deemed appropriate by the Trustee so that only Securities in denominations of \$1.00, or integral multiples of \$1.00 in excess of \$1.00, shall be purchased); and

(9) that Holders whose Securities were purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered, which unpurchased portion must be equal to \$1.00 in principal amount or an integral multiple of \$1.00 in excess of \$1.00.

If any of the Securities subject to an Asset Sale Excess Proceeds Offer is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depository applicable to repurchases.

Promptly after the Asset Sale Excess Proceeds Termination Date, the Company shall, to the extent lawful, accept for payment Securities or portions thereof tendered pursuant to the Asset Sale Excess Proceeds Offer in the aggregate principal amount required by this Section 4.03 hereof, and prior to the Asset Sale Excess Proceeds Offer Purchase Date the Company shall deliver to the Trustee an Officer's Certificate stating that such Securities or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 4.03. Prior to 11:00 a.m., New York City time, on the Asset Sale Excess Proceeds Offer Purchase Date, the Company or the Paying Agent, as the case may be, shall mail or deliver to each tendering Holder an amount equal

to the Asset Sale Excess Proceeds Offer Price with respect to the aggregate principal amount of the Securities validly tendered by such Holder and accepted by the Company for purchase, and the Company shall issue a new Security, and the Trustee shall authenticate and mail or deliver such new Security to such Holder, in a principal amount equal to any unpurchased portion of the Security surrendered. Any Security not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company shall publicly announce the results of the Asset Sale Excess Proceeds Offer on or before the Asset Sale Excess Proceeds Offer Purchase Date.

SECTION 4.04 Repurchase Upon Release Trigger Event. No later than the fifth (5th) Business Day after the occurrence of a Release Trigger Event, the Company shall deliver an Officer's Certificate to the Trustee specifying (i) such Release Trigger Event and the Collateral Release Excess Proceeds in respect thereof; (ii) any Property or Capital Stock that has become Excluded Released Property as a result of such Release Trigger Event; and (iii) any Subsidiary that has become an Excluded Non-Guarantor Subsidiary as a result of such Release Trigger Event. The Company will, within 25 Business Days after the receipt of Net Available Cash (other than (1) proceeds from (x) Recourse Indebtedness permitted to be incurred pursuant to Section 4.02(b)(14) or (y) Non-Recourse Mortgage Indebtedness permitted to be incurred pursuant to Section 4.02, in either case used solely for the construction or development of any Property that has been approved by the Boards of Directors of both the Company and the REIT and used for the purpose of financing a property development project, which shall not be subject to this Section 4.04 and (2) any Excluded Release Trigger Event Proceeds (as defined below) with respect to such Release Trigger Event) from any Release Trigger Event (such Net Available Cash, excluding any such proceeds specified in clause (1)(x) or (y) above and any Excluded Release Trigger Event Proceeds, the "*Collateral Release Excess Proceeds*") in an aggregate amount that exceeds \$25.0 million, (i) offer to all Holders of Securities (the "*Collateral Release Excess Proceeds Offer*") to purchase Securities in an amount up to the Pro Rata Percentage Amount with respect to such Release Trigger Event applicable to the Securities (the "*Collateral Release Excess Proceeds Offer Amount*") at the price set forth below including accrued and unpaid interest, if any, to the purchase date (the "*Collateral Release Excess Proceeds Offer Price*") (subject to the right of Holders of record on the relevant Regular Record Date to receive interest due on an Interest Payment Date that is on or prior to the purchase date) (such purchase date, the "*Collateral Release Excess Proceeds Purchase Date*"); and (ii) substantially concurrently therewith, effect a Collateral Release Excess Proceeds Redemption with respect to the Other Secured Notes in an amount equal to the sum of (i) the Pro Rata Percentage Amount with respect to such Release Trigger Event applicable to the Other Secured Notes and (ii) the Collateral Release Excess Proceeds Securities Unused Amount, if any, with respect to such Collateral Release Excess Proceeds Offer and otherwise in accordance with the Other Secured Notes Indenture. For the avoidance of doubt, upon completion of each Collateral Release Excess Proceeds Offer and the substantially concurrent Collateral Release Excess Proceeds Redemption, there will remain no unapplied amount of such Collateral Release Excess Proceeds. The Company may, at its option, satisfy the foregoing obligations with respect to a Collateral Release Excess Proceeds Redemption and concurrent Collateral Release Excess Proceeds Offer prior to having more than \$25.0 million of Collateral Release Excess Proceeds.

For purposes of this Section 4.04, "*Excluded Release Trigger Event Proceeds*" means, with respect to any Release Trigger Event, such portion of the Net Available Cash of any Release Trigger Event (not to exceed 30% of such Net Available Cash) as the Company shall, at its option,

with the approval of the Boards of Directors of both the Company and the REIT, use to repay at a discount Non-Recourse Mortgage Indebtedness or Recourse Indebtedness of any Excluded Non-Guarantor Subsidiary owning any Property that immediately prior to such repayment does not constitute Collateral (such Property, “*Trigger Release Replacement Property*”); provided that (i) as a result of such repayment, such Non-Recourse Mortgage Indebtedness or Recourse Indebtedness is satisfied and discharged in its entirety and, simultaneously with such repayment, all Liens on such Trigger Release Replacement Property and any other property or assets of the Company or any Subsidiary securing such Indebtedness are released; (ii) no Event of Default shall have occurred and be continuing or would occur as a consequence thereof; (iii) such Trigger Release Replacement Property shall be deemed listed under Category 1 on Annex I hereto and the Company shall promptly deliver to the Collateral Agent the documents and certificates required by Section 4.14 and Article 12 of this Indenture; and (iv) prior to or simultaneously with or within ten (10) Business Days after the repayment of the Indebtedness previously secured by such Trigger Release Replacement Property (or 45 days in the case of a mortgage), (i) (x) the Subsidiary owning such Trigger Release Replacement Property (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (y) the Collateral Agent has been granted a valid, enforceable perfected first-priority security interest (subject only to Permitted Collateral Liens) in such Trigger Release Replacement Property in accordance with Section 4.14 and (ii) in the manner specified in Section 12.02(c) and Section 12.04(e) of this Indenture, the Company or such Subsidiary Guarantor shall have executed and delivered to the Collateral Agent such Security Documents referred to therein or as shall otherwise be reasonably necessary to vest in the Collateral Agent a valid, enforceable perfected security interest or other Liens in or on such Trigger Release Replacement Property and to have such Trigger Release Replacement Property added to the Collateral, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions, if any) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents and an Officer’s Certificate and Opinion of Counsel as to the satisfaction of the foregoing requirements (such Opinions of Counsel and Officer’s Certificate also to be delivered to the Trustee); and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such Trigger Release Replacement Property in the same extent and with the same force and effect. For the avoidance of doubt, Excluded Release Trigger Event Proceeds shall not be Collateral Release Excess Proceeds subject to this Section 4.04.

Pending the final application of any Net Available Cash from any Collateral Release Excess Proceeds Offer, upon the actual receipt by the Company or a Subsidiary of the Net Available Cash attributable to Collateral Release Excess Proceeds, (i) the Company will notify the Collateral Agent of such receipt and (ii) the Company shall cause, or cause such Subsidiary to cause, such amounts (such amounts, the “*Pending Redemption Cash*”) to be deposited directly by the Company or such Subsidiary in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and the Pending Redemption Cash will constitute Collateral pending application in the Collateral Release Excess Proceeds Offer or Collateral Release Excess Proceeds Redemption.

The Collateral Release Excess Proceeds Offer Price shall be at the prices set forth below (expressed in percentages of principal amount on the Collateral Release Excess Proceeds Purchase Date), plus accrued and unpaid interest to but excluding the Collateral Release Excess Proceeds Purchase Date (subject to the right of Holders of record on the relevant Regular Record Date to receive interest due on the relevant Interest Payment Date), if purchased during the periods set forth below:

Period	Collateral Release Excess Proceeds Offer Price
Issue Date to [May 14], 2023	100.0%
[May 15], 2023 to [May 14, 2024]	105.0%
[May 15, 2024] to [May 14, 2025]	102.5%
[May 15, 2025] and thereafter	100.0%

On the Collateral Release Excess Proceeds Purchase Date, the Company will deposit with the Trustee such respective portions of the Collateral Release Excess Proceeds as will enable the Trustee, to the extent of the Securities tendered in such Collateral Release Excess Proceeds Offer, to apply the portion of such Collateral Release Excess Proceeds equal to the product of (x) the amount of the Securities validly tendered and accepted for purchase in the Collateral Release Excess Proceeds Offer and (ii) the Collateral Release Excess Proceeds Offer Price plus accrued and unpaid interest to but excluding the Collateral Release Excess Proceeds Purchase Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date). For the avoidance of doubt, the Company's making of any Collateral Release Excess Proceeds Offer shall not constitute a redemption of Securities.

Any Collateral Release Excess Proceeds remaining after consummation of a Collateral Release Excess Proceeds Offer shall be applied in the related Collateral Release Excess Proceeds Redemption. If the aggregate Collateral Release Excess Proceeds Offer Price payable in respect of the aggregate principal amount of Securities tendered into such Collateral Release Excess Proceeds Offer exceeds the Collateral Release Excess Proceeds Offer Amount, the Trustee will select the Securities to be purchased on a *pro rata* basis. Upon surrender of a Security that is repurchased in part, the Company shall issue in the name of the applicable Holder and the Trustee shall authenticate for such Holder at the expense of the Company a new Security equal in principal amount to the non-repurchased portion of the Security surrendered.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Securities pursuant to an Collateral Release Excess Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.04, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions by virtue of such compliance.

In the event that, pursuant to this Section 4.04 hereof, the Company shall be required to commence a Collateral Release Excess Proceeds Offer, the Company shall follow the procedures specified below:

(a) The Collateral Release Excess Proceeds Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the “*Collateral Release Excess Proceeds Offer Period*”). No later than five Business Days after the termination of the Collateral Release Excess Proceeds Offer Period (the “*Collateral Release Excess Proceeds Offer Purchase Date*”), the Company shall purchase and pay the Collateral Release Excess Proceeds Offer Price with respect to all Securities validly tendered and accepted for purchase, or if the amount of Securities validly tendered at the Collateral Release Excess Proceeds Offer Price with respect to all Securities validly tendered is greater than the Collateral Release Excess Proceeds Offer Amount, the Company shall purchase and pay for Securities validly tendered at the Collateral Release Excess Proceeds Offer Price in an aggregate amount equal to the Collateral Release Excess Proceeds Amount. Payment for any Securities so purchased shall be made in the manner prescribed in the Securities.

(b) Upon the commencement of an Collateral Release Excess Proceeds Offer, the Company shall send, by first class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Collateral Release Excess Proceeds Offer. The Collateral Release Excess Proceeds Offer shall be made to all Holders. The notice, which shall govern the terms of the Collateral Release Excess Proceeds Offer, shall state:

(1) that the Collateral Release Excess Proceeds Offer is being made pursuant to this Section 4.04 hereof, and the length of time the Collateral Release Excess Proceeds Offer shall remain open, including the time and date the Collateral Release Excess Proceeds Offer will terminate (the “*Collateral Release Excess Proceeds Termination Date*”);

(2) the Collateral Release Excess Proceeds Offer Price;

(3) that the aggregate amount to be applied to purchase the Securities in the Collateral Release Excess Proceeds Offer will consist of an amount equal to the Pro Rata Percentage Amount applicable to the Securities (and specifying such amount);

(4) that any Security not tendered or accepted for payment shall continue to accrue interest;

(5) that, unless the Company defaults in making such payment, any Security accepted for payment pursuant to the Collateral Release Excess Proceeds Offer shall cease to accrue interest after the Collateral Release Excess Proceeds Offer Purchase Date;

(6) that Holders electing to have a Security purchased pursuant to any Collateral Release Excess Proceeds Offer shall be required to surrender the Security, properly endorsed for transfer, together with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Security completed and such customary documents as the Company

may reasonably request, to the Company or a Paying Agent at the address specified in the notice, before the Collateral Release Excess Proceeds Termination Date;

(7) that Holders shall be entitled to withdraw their election if the Company or the Paying Agent, as the case may be, receives, prior to the Collateral Release Excess Proceeds Termination Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased;

(8) that, if the aggregate principal amount of Securities surrendered by Holders at the Collateral Release Excess Proceeds Offer Price exceeds the Collateral Release Excess Proceeds Offer Amount, the Trustee shall select the Securities to be purchased on a pro rata basis on the basis of the aggregate principal amount of validly tendered Securities (with such adjustments as may be deemed appropriate by the Trustee so that only Securities in denominations of \$1.00, or integral multiples of \$1.00 in excess of \$1.00, shall be purchased); and

(9) that Holders whose Securities were purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered, which unpurchased portion must be equal to \$1.00 in principal amount or an integral multiple of \$1.00 in excess of \$1.00.

If any of the Securities subject to a Collateral Release Excess Proceeds Offer is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depository applicable to repurchases.

Promptly after the Collateral Release Excess Proceeds Termination Date, the Company shall, to the extent lawful, accept for payment Securities or portions thereof tendered pursuant to the Collateral Release Excess Proceeds Offer in the aggregate principal amount required by this Section 4.04 hereof, and prior to the Collateral Release Excess Proceeds Offer Purchase Date the Company shall deliver to the Trustee an Officers' Certificate stating that such Securities or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 4.04. Prior to 11:00 a.m., New York City time, on the Collateral Release Excess Proceeds Offer Purchase Date, the Company or the Paying Agent, as the case may be, shall mail or deliver to each tendering Holder an amount equal to the Collateral Release Excess Proceeds Offer Price with respect to the aggregate principal amount of the Securities validly tendered by such Holder and accepted by the Company for purchase, and the Company shall issue a new Security, and the Trustee shall authenticate and mail or deliver such new Security to such Holder, in a principal amount equal to any unpurchased portion of the Security surrendered. Any Security not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company shall publicly announce the results of the Collateral Release Excess Proceeds Offer on or before the Collateral Release Excess Proceeds Offer Purchase Date.

SECTION 4.05 Limitation on Affiliate Transactions. (a) The Company shall not, and shall not permit any of its Subsidiaries to, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation

arrangements or the rendering of any service) with, or for the benefit of, any Affiliate of the Company in an amount greater than \$1.0 million in any transaction or series of related transactions (an “*Affiliate Transaction*”) unless:

(1) the terms of the Affiliate Transaction are not materially less favorable to the Company or such Subsidiary than those that could reasonably be expected to be obtained at the time of the Affiliate Transaction in arm’s-length dealings with a Person who is not an Affiliate;

(2) if such Affiliate Transaction involves an amount in excess of \$5.0 million, the terms of the Affiliate Transaction are set forth in writing and a majority of the directors of the Company disinterested with respect to such Affiliate Transaction have determined in good faith that the criteria set forth in clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a Board Resolution; and

(b) The provisions of Section 4.05(a) shall not prohibit:

(1) any employment agreement or other employee compensation plan or arrangement in existence on the Issue Date or entered into thereafter in the ordinary course of business including any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the Board of Directors;

(2) loans or advances to employees (or cancellations thereof) in the ordinary course of business in accordance with the past practices of the Company or its Subsidiaries, but in any event not to exceed \$1.0 million in the aggregate outstanding at any one time;

(3) advances to or reimbursements of employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures, in each case in the ordinary course of business of the Company or any of its Subsidiaries;

(4) the payment of reasonable compensation and fees to directors of the Company and its Subsidiaries who are not employees of the Company or its Subsidiaries;

(5) any transaction between the REIT, the Company, the Operating Partnership and/or their respective Subsidiaries;

(6) indemnities of officers, directors and employees of the Company or any Subsidiary consistent with applicable charter, by-law or statutory provisions;

(7) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company or the receipt by the Company of a cash capital contribution from its stockholders;

(8) transactions with Joint Ventures, customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, provided that in the reasonable determination of the Board of Directors or the senior management of the Company, such

transactions are on terms not materially less favorable to the Company or the relevant Subsidiary than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company;

(9) transactions between the Company or any Subsidiary and any Person, a director of which is also a director of the Company or any director or indirect parent company of the Company, and such director is the sole cause for such Person to be deemed an Affiliate of the Company or any Subsidiary; provided, however, that such director shall abstain from voting as a director of the Company or such direct or indirect parent company, as the case may be, on any matter involving such other Person;

(10) any transaction with Affiliates pursuant to arrangements in existence on the Issue Date pursuant to which those Affiliates own, or are entitled to acquire, working, overriding royalty or other similar interests in particular properties operated by the Company or any Subsidiary or in which any of the Company or one or more Subsidiaries also own an interest;

(11) mergers, consolidations or sales of all or substantially all assets permitted by, and complying with, the provisions of Section 5.01, 5.02 and 5.03;

(12) the execution of the restructuring transactions pursuant to the Plan of Reorganization and the payment of all fees and expenses related thereto or required by the Plan of Reorganization; and

(13) transactions undertaken in good faith by the Company for the purpose of improving the consolidated tax efficiency of the Company and its Subsidiaries and not for the purpose, or with the effect, of circumventing any provision set forth in this Indenture.

SECTION 4.06 Liens and Negative Pledge. The Company shall not, and shall not permit any of its Subsidiaries, directly or indirectly, to:

(a) Incur or suffer to exist any Lien (other than Permitted Collateral Liens) on any Collateral or any Liens (other than Permitted Liens) on any other Properties, or any direct or indirect ownership interest of the Company or any Subsidiary in any Person owning any Collateral or any Property, whether owned at the Issue Date or thereafter acquired, other than Permitted Collateral Liens (in the case of Collateral) or Permitted Liens (in the case of any other Property); or

(b) permit any Collateral or any other properties or assets held by the Company or any Subsidiary, as applicable, to be subject to a Negative Pledge (other than pursuant to the Secured Debt Documents), other than (i) any properties or assets held by any Excluded Non-Guarantor Subsidiary or (ii) any Excluded Property.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of

interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (7) of the definition of Indebtedness.

SECTION 4.07 Future Guarantors. The Company and each Subsidiary shall cause each Subsidiary that is not already a Subsidiary Guarantor (other than any Excluded Non-Guarantor Subsidiary) to, within 30 calendar days of the date on which such Person became such a Subsidiary, (i) execute and deliver to the Trustee and the Collateral Agent, if applicable, a Guaranty Supplemental Indenture pursuant to which such Subsidiary shall Guarantee payment of the Securities on the same terms and conditions as those set forth in this Indenture and a joinder to the Collateral Agency and Intercreditor Agreement and (ii) deliver to the Trustee an Opinion of Counsel satisfactory to the Trustee as to the authorization, execution and delivery by such Subsidiary of such Guaranty Supplemental Indenture and such joinder and the validity and enforceability against such Subsidiary of this Indenture (including the Note Guarantee of such Subsidiary) and the Collateral Agency and Intercreditor Agreement. The Company and each Subsidiary shall cause each Subsidiary that guarantees any Other Secured Notes Obligations to, at the same time, (i) execute and deliver to the Trustee and the Collateral Agent, if applicable, a Guaranty Supplemental Indenture pursuant to which such Subsidiary shall Guarantee payment of the Securities on the same terms and conditions as those set forth in this Indenture and a joinder to the Collateral Agency and Intercreditor Agreement and (ii) deliver to the Trustee an Opinion of Counsel satisfactory to the Trustee as to the authorization, execution and delivery by such Subsidiary of such Guaranty Supplemental Indenture and such joinder and the validity and enforceability against such Subsidiary of this Indenture (including the Note Guarantee of such Subsidiary) and the Collateral Agency and Intercreditor Agreement.

SECTION 4.08 Compliance Certificate. The Company shall deliver to the Trustee within the later of (a) 120 days after the end of each fiscal year of the Company or (b) five (5) days after the filing with the SEC of the applicable Form 10-K (or any successor or comparable form) pursuant to Section 4.12 by the Reporting Entity, an Officer's Certificate of the Company stating that in the course of the performance by the signer of his or her duties as an Officer of the Company they would normally have knowledge of any Default and whether the signer knows of any Default that occurred during such fiscal year. If the signer is aware of a Default, the certificate shall describe the Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company shall comply with TIA § 314(a)(4) and deliver the certificate referred to in such section of the TIA, which certificate shall be delivered to the Trustee within the later of (a) 120 days after the end of each fiscal year of the Company or (b) five (5) days after the filing with the SEC of the applicable Form 10-K (or any successor or comparable form) pursuant to Section 4.12 by the Reporting Entity. For purposes of this Section 4.08, the "fiscal year" of the Company means a calendar year ending December 31.

SECTION 4.09 Further Instruments and Acts.

(a) Upon reasonable request of the Trustee, the Company will, and will cause each of its Subsidiaries to, execute and deliver such further instruments and do such further acts

as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

(b) Promptly upon reasonable request by the Collateral Agent, the Company shall, and the Company shall cause each of its Subsidiaries to, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, any and all such further acts, deeds, conveyances, security agreements, mortgages, deeds of covenants, collateral agency agreements, deeds of trust, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments the Collateral Agent may require from time to time in order to (i) carry out more effectively the purposes of any Security Document, (ii) subject to the Liens created by any of the Security Documents any of the properties, rights or interests intended to be covered by any of the Security Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and the Liens intended to be created thereby, and (iv) better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Collateral Agent the rights granted or now or hereafter intended to be granted to the Collateral Agent under the Security Documents.

(c) Upon reasonable request of the Collateral Agent at any time after an Event of Default has occurred and is continuing, the Company shall, and shall cause each of its Subsidiaries to, (i) permit the Collateral Agent or any advisor, auditor, consultant, attorney or representative acting for the Collateral Agent, upon reasonable notice to the Company or such Subsidiary, as applicable, and during normal business hours, to visit and inspect any Collateral to the Company or such Guarantor, as applicable, to review, make extracts from and copy the books and records of to the Company or such Subsidiary, as applicable, relating to any such property, and to discuss any matter pertaining to any such property with the officers and employees of the Company or such Subsidiary, as applicable, and (ii) deliver to the Collateral Agent such reports, including valuations to the extent previously available, relating to any such property or any Lien thereon as the Collateral Agent may request. The Company will promptly reimburse the Trustee and Collateral Agent for all costs and expenses incurred by the Trustee or Collateral Agent in connection therewith, including all reasonable fees and charges of any advisors, auditors, consultants, attorneys or representatives acting for the Trustee or for the Collateral Agent.

SECTION 4.10 Insurance. The Company will, and will cause each of the Company's Subsidiaries to, maintain, with financially sound and reputable insurance companies, insurance (including property insurance, liability insurance, business interruption insurance, and workers' compensation insurance) in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Subject to the Security Documents and the Collateral Agency and Intercreditor Agreement, the loss payable clauses or provisions in said insurance policy or policies insuring any of the Collateral shall be endorsed in favor of the Collateral Agent as its interests in the Collateral may appear and any such liability policies shall name the Collateral Agent as "additional insureds" (except no endorsements shall be required with respect to worker's compensation policies) and any casualty insurance policies shall name the Collateral Agent as a "loss payee", and also provide that the insurer will endeavour to give at least thirty (30) days prior notice of any cancellation (or at least ten (10) days' notice of any cancellation due to non-payment) to the Collateral Agent, it being understood that the Company shall be afforded a period of sixty (60) days following the Issue Date to comply with this Section 4.10 (or such longer period approved by the Collateral Agent). Upon

reasonable request of the Collateral Agent, the Company shall, and shall cause each of its Subsidiaries to, furnish to the Collateral Agent such information relating to its property and liability insurance carriers as may be requested by the Collateral Agent from time to time. Notwithstanding the foregoing, the Company and its Subsidiaries may self-insure with respect to such risks with respect to which companies of established reputation in the same general line of business in the same general area usually self-insure.

SECTION 4.11 Impairment of Security Interest.

Each of the Guarantors will not and the Company will not, and Company will not permit any of its Subsidiaries to, directly or indirectly:

- (1) take or omit to take, any action which action or omission could be reasonably expected to have the result of materially impairing the security interest with respect to the Collateral for the benefit of the Collateral Agent and the holders of the Secured Obligations; or
- (2) grant to any Person other than the Collateral Agent, for the benefit of the Trustee, the Other Secured Notes Trustee and the other holders of the Secured Obligations, any interest whatsoever in any of the Collateral;

in each case, other than in connection with the creation of Permitted Collateral Liens.

SECTION 4.12 Reports and Other Information.

(a) For so long as any Securities are outstanding, the Company shall deliver to the Trustee a copy of all of the information and reports referred to below (within the time periods specified in the SEC's rules and regulations that would apply if the Company were required to file with the SEC as a "non-accelerated filer"; provided that if the Reporting Entity (as defined below) is filing such information and reports with the SEC, within the time periods specified in the SEC rules and regulations for such Reporting Entity):

- (1) annual reports of the Reporting Entity (as defined below) for such fiscal year containing the information that would have been required to be contained in an annual report on Form 10-K (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC;
- (2) quarterly reports of the Reporting Entity for each of the first three fiscal quarters of each fiscal year thereafter containing the information that would have been required to be contained in a quarterly report on Form 10-Q (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC; and
- (3) current reports of the Reporting Entity containing substantially all of the information that would be required to be filed in a current report on Form 8-K under the Exchange Act on the Issue Date pursuant to Sections 1, 2 and 4, Items 5.01, 5.02(a), (b)

and (c) and Item 9.01(a) and (b) (only to the extent relating to any of the foregoing) of Form 8-K if the Reporting Entity had been a reporting company under the Exchange Act.

In addition to providing such information to the Trustee, the Company shall make available to the Holders, prospective investors, bona fide market makers and securities analysts the information required to be provided pursuant to the foregoing clauses (1), (2) and (3), by posting such information to its website (or the website of any of the Company's parent companies, including the Reporting Entity) or on IntraLinks or any comparable online data system or website.

Notwithstanding the foregoing, (A) neither the Company nor any Reporting Entity that is not subject to Section 13 or 15(d) of the Exchange Act will be required to deliver any information, certificates or reports that would otherwise be required by (i) Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (ii) Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein and (B) such reports will not be required to contain audited or unaudited condensed consolidating financial information in the notes to the audited or unaudited financial statements required by Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X or include any exhibits or certifications required by Form 10-K, Form 10-Q or Form 8-K (or any successor or comparable forms) or related rules under Regulation S-K; provided that for the avoidance of doubt if the Reporting Entity is not the Company, such Reporting Entity will continue to be required to deliver the information described in clause (2) of Section 4.12(b) in either the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section or other such non-financial statement section of such report or as otherwise permitted pursuant to clause (b) below.

(b) The financial statements, information and other documents required to be provided as described in this Section 4.12 may be those of (i) the Company or (ii) any direct or indirect parent of the Company (any such entity described in clause (i) or (ii), a "*Reporting Entity*"), so long as in the case of clause (ii) either (1) such direct or indirect parent of the Company shall not conduct, transact or otherwise engage, or commit to conduct, transact or otherwise engage, in any business or operations other than its direct or indirect ownership of all of its equity interests in, and its management of, the Company or (2) if otherwise, the financial information so delivered shall be accompanied by (which may be included in a separate supplement that is not filed with the SEC so long as such supplement is made publicly available on the Company or the REIT's website) a reasonably detailed description of the quantitative differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Subsidiaries on a standalone basis, on the other hand, with such reasonably detailed description, including: (x) condensed consolidating financial information for the REIT, on an unconsolidated basis, the Operating Partnership, on an unconsolidated basis, the New Bank Claim Borrower and its Subsidiaries on a consolidated basis, the Company and its Subsidiaries on a consolidated basis, intercompany eliminations and consolidation entries and the REIT and its subsidiaries on a consolidated basis, (y) the portfolio level financial information by property category (including by malls, other and total) as contained on slide 31 of Exhibit 99.2 (Presentation to the Ad Hoc Group dated July 2020) to the Current Report on Form 8-K filed by the REIT and the Operating Partnership with the SEC on August 19, 2020 and (z) the occupancy rate and sales per square foot operating statistics by the same property categories used in the preceding clause (y); provided that in case of clause (x), no such information shall be required to be provided for

any periods ending prior to the Issue Date and in the case of clauses (y) and (z), such information shall be provided initially for the years ended January 1, 2019, 2020 and 2021 (in each case, to the extent available) and thereafter for the same interim financial statement periods and annual financial statement periods included in the applicable quarterly or annual report required to be provided pursuant to Section 4.12(a).

(c) The Company will make such information available electronically to prospective investors upon request. The Company shall, for so long as any Securities remain outstanding during any period when it is not or any Reporting Entity is not subject to Section 13 or 15(d) of the Exchange Act, or otherwise permitted to furnish the SEC with certain information pursuant to Rule 12g3-2(b) of the Exchange Act, furnish to the Holders and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(d) Notwithstanding the foregoing, the Company will be deemed to have delivered such reports and information referred to in this Section 4.12 to the Holders, prospective investors, market makers, securities analysts and the Trustee for all purposes of this Indenture if the Company or another Reporting Entity has filed such reports with the SEC via the EDGAR filing system (or any successor system) and such reports are publicly available. In addition, the requirements of this Section 4.12 shall be deemed satisfied and the Company will be deemed to have delivered such reports and information referred to in this Section 4.12 to the Trustee, Holders, prospective investors, market makers and securities analysts for all purposes of this Indenture by the posting of reports and information that would be required to be provided on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity). Notwithstanding the foregoing, the Trustee shall have no obligation to monitor or confirm, on a continuing basis or otherwise, whether the Company posts such reports, information and documents on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity) or the SEC's EDGAR service, or collect any such information from the Company's (or any of the Company's parent companies') website or the SEC's EDGAR service. The Trustee shall have no liability or responsibility for the content, filing or timeliness of any report delivered or filed under or in connection with this Indenture or the transactions contemplated thereunder.

(e) Delivery of such reports, information and documents to the Trustee pursuant to this Section 4.12 is for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's, any Subsidiary Guarantors' or any other Person's compliance with any of its covenants under this Indenture or the Securities (as to which the Trustee is entitled to rely exclusively on the Officer's Certificates). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provision of this Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein.

SECTION 4.13 [Reserved.]

SECTION 4.14 After-Acquired Property. If at any time the Company or any of its Subsidiaries acquires or otherwise owns any asset or property (other than Collateral or Excluded

Property) constituting Property or Capital Stock or material other After-Acquired Property (except as otherwise provided under Section 4.03 or any Property acquired solely with proceeds from an issuance of Capital Stock of the REIT contributed by the REIT to the Company or the applicable Guarantor), both:

(x)(i) if the Capital Stock so acquired or otherwise owned is Capital Stock of a Joint Venture, the Subsidiary that acquires such Capital Stock shall be a Subsidiary Guarantor or become a Subsidiary Guarantor to the extent (A) required pursuant to Section 4.07 and (B) such guarantee is permitted by the agreements governing such Joint Venture and any agreement governing Indebtedness of such Joint Venture provided that the Company shall use its commercially reasonable efforts in good faith to cause such guarantee to be permitted, and any Property owned by such Joint Venture shall be deemed listed under “Category 4” on Annex I hereto, (ii) if any Property so acquired or otherwise owned (directly or through the acquisition of Capital Stock) is Excluded After-Acquired Property owned by a Subsidiary of a Subsidiary, then such applicable Property shall be deemed listed under “Category 4” on Annex I hereto and the Subsidiary that owns the Capital Stock of the Subsidiary that directly owns such Property shall be a Subsidiary Guarantor to the extent required or become a Subsidiary Guarantor pursuant to Section 4.07 and (iii) if any Property so acquired or otherwise owned (directly or through the acquisition of Capital Stock) is owned by a Subsidiary and is not subject to a Lien securing Non-Recourse Mortgage Indebtedness at the time of acquisition, (A) such Subsidiary (and each other Subsidiary owning (directly or indirectly) Capital Stock in such Subsidiary) shall be a Subsidiary Guarantor or become a Subsidiary Guarantor pursuant to Section 4.07 and (B) such Property shall be deemed listed under “Category 1” on Annex I hereto, and

(y) the Company or such Subsidiary shall cause a valid, enforceable, perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien in or on such After-Acquired Property (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and execute and deliver to the Collateral Agent the following documents and certificates and any other documents and certificates required by this Section 4.14, Article 11 or any other provision of this Indenture:

(1) to the extent such After-Acquired Property constitutes Property deemed listed under “Category 1” on Annex I hereto, (x) a Mortgage with respect to such After-Acquired Property, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office), (y) Security Documents with respect to all personal property of the Company or such Subsidiary, as applicable, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee) and (z) the remaining Real Property Collateral Requirements;

(2) to the extent such After-Acquired Property constitutes Capital Stock, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all other personal property of the Company or such Subsidiary, as applicable, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents; provided that to the extent that the pledge of Capital Stock in a Joint Venture is not permitted by the agreements governing such Joint Venture or any agreement governing Indebtedness of such Joint Venture, the Company shall only be required to use commercially reasonable efforts in good faith to provide a pledge of such Capital Stock in such Joint Venture;

(3) to the extent of any material After-Acquired Property other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(4) to the extent such After-Acquired Property is deemed listed under Category 1 on Annex I hereto, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require; and

(5) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect.

SECTION 4.15 No Restrictive Agreements.

(a) The Company will exercise commercially reasonable efforts in good faith so that it will not, and will not permit any of its Subsidiaries to, enter into any Joint Venture after the Issue Date governed by any agreement, or after the Issue Date amend any agreement governing any Joint Venture, to the extent such agreement prohibits (or, in the case of an amendment, prohibits to a greater extent than the existing agreement) (i) the pledge to secure the Secured

Obligations of the Capital Stock in any Subsidiary directly or indirectly owning Capital Stock in, such Joint Venture or (ii) such Subsidiary or any Subsidiary owning Capital Stock (directly or indirectly) in such Subsidiary from being or becoming a Subsidiary Guarantor (it being understood that no such Subsidiary Guarantee shall be required if, notwithstanding the use of commercially reasonable efforts in good faith, the joint venture partner(s) do not permit such Subsidiary Guarantee).

(b) The Company will exercise commercially reasonable efforts in good faith so that it will not, and will not permit any Subsidiary to, incur any Indebtedness after the Issue Date governed by any agreement, or after the Issue Date amend any agreement governing Indebtedness, to the extent such agreement prohibits (or, in the case of an amendment, prohibits to a greater extent than the existing agreement) (i) the pledge to secure the Secured Obligations of the Capital Stock in any Person directly or indirectly owning Capital Stock in, such Subsidiary or (ii) such Subsidiary or any Subsidiary owning such Capital Stock (directly or indirectly) in such Subsidiary from being or becoming a Subsidiary Guarantor (it being understood that no such Subsidiary Guarantee shall be required if, notwithstanding the use of commercially reasonable efforts, the applicable lenders do not permit such Subsidiary Guarantee).

SECTION 4.16 Existence.

Except as otherwise permitted pursuant to the terms hereof (including consolidation and merger permitted by Section 5.01), the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate, partnership, limited liability company or other existence, and shall do or cause to be done all things necessary to keep in full force and effect the existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of any such Subsidiary; provided, however, that shall not be required to preserve the existence of any of its Subsidiaries if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Holders.

SECTION 4.17 Future Covenants.

(a) Upon the Collateral Release/Covenant Revision Trigger Date:

(1) each of the following covenants herein (the “*Replaced Covenants*”) will be amended and restated in its entirety to become the corresponding revised covenant included in Exhibit E (the “*Revised Covenants*”) and, thereupon, the Company and the Restricted Subsidiaries will be subject to the Revised Covenants included in Exhibit E (and shall not be required to comply with the Replaced Covenants):

- (i) Section 4.02 “Limitation on Indebtedness”;
- (ii) Section 4.03 “Limitation on Asset Sales”;
- (iii) Section 4.04 “Repurchase Upon Release Trigger Event”;
- (iv) Section 4.05 “Limitation on Affiliate Transactions”;

- (v) Section 4.06 “Liens and Negative Pledge”;
- (vi) Section 4.07 “Future Guarantors”; and
- (vii) Section 4.14 “After Acquired Property”;

(2) each of the definitions herein related to the Replaced Covenants that is identified as a “Replaced Definition” on Exhibit E will be amended and restated in its entirety to become the corresponding revised definition included in Exhibit E (“*Revised Definition*”); and each of the definitions herein that is identified as a “Deleted Definition” on Exhibit E will be deleted;

(3) the following covenants (the “*Terminated Covenants*”) will be terminated and, thereupon, the Company and the Restricted Subsidiaries will no longer be subject to (and shall not be required to comply with) the Terminated Covenants:

- (i) Section 4.15 “No Restrictive Agreements”;

(4) each of the Subsidiary Guarantors (other than any Category 1 Subsidiary) shall be released from its Note Guarantee pursuant to Section 10.05(5); and

(5) the Collateral (other than any Category 1 Collateral) shall be released from the Collateral Agent’s Lien securing the Secured Obligations pursuant to Section 11.05(9).

(b) The Company shall deliver an Officer’s Certificate to the Trustee indicating the occurrence of any Collateral Release/Covenant Revision Trigger Date. The Trustee shall have no duty to (i) monitor the Collateral Release/Covenant Revision Trigger Date, (ii) determine whether a Collateral Release/Covenant Revision Trigger Date has occurred, or (iii) notify Holders of any of the foregoing. The Trustee may provide a copy of the Officer’s Certificate to any Holder upon request.

(c) For purposes of this Section 4.17, Section 10.05 and Section 11.05, the following terms shall have the meanings specified below.

“*Category 1 Collateral*” means:

- (i) any Category 1 Property;
- (ii) any Capital Stock in any Subsidiary that owns, directly or indirectly, any Category 1 Collateral;
- (iii) any personal property owned by any Category 1 Subsidiary; and
- (iv) any amounts of Net Available Cash held in a deposit account by the Company or any Category 1 Subsidiary and constituting Category 1 Collateral in accordance with Section 4.03 or Section 4.04.

“*Category 1 Property*” means:

- (i) any Property set forth in Category 1 on Annex I hereto; and
- (ii) any Property acquired with the proceeds from the sale or other disposition of, or in exchange for, any Category 1 Collateral.

“*Category 1 Subsidiary*” means any Subsidiary that owns, directly or indirectly, any Category 1 Collateral.

“*Collateral Release/Covenant Revision Trigger Date*” means the first date on which each of:

(i) either (x) the Other Secured Notes Indenture has been satisfied and discharged in accordance with Section 8.01(a) of the Other Secured Notes Indenture or (y) the covenant defeasance or legal defeasance of the Other Secured Notes Indenture has been effected in accordance with Section 8.01(b) of the Other Secured Notes Indenture; and

(ii) the ratio, expressed as a percentage of, (x) Consolidated Modified Cash NOI solely with respect to the Qualifying Category 1 Properties on a trailing four (4) fiscal quarter basis as of the last day of the most recently completed fiscal quarter for which financial statements are required to be delivered pursuant to Section 4.12 hereof to (y) the aggregate principal amount of the Securities outstanding on such date, exceeds 15.0%; and

(iii) no Default or Event of Default has occurred and is continuing.

“*Qualifying Category 1 Property*” means, at any time, any Category 1 Property that at such time is (i) directly owned by a Qualifying Category 1 Subsidiary Guarantor and (ii) subject to a Mortgage securing the Secured Obligations.

“*Qualifying Category 1 Subsidiary Guarantor*” means, at any time, any Wholly Owned Subsidiary (i) that at such time (a) is a Subsidiary Guarantor and (b) directly owns solely a Category 1 Property and (ii) all the Capital Stock in which at such time has been pledged pursuant to a Security Document to secure the Secured Obligations.

ARTICLE 5

Successor Company

SECTION 5.01 Company and Guarantors May Consolidate, Etc., Only on Certain Terms.

(a) Other than in connection with and pursuant to the express written terms of the Plan of Reorganization, the Company shall not, in any transaction or series of related transactions, consolidate or amalgamate with or merge into any Person or sell, lease, assign, transfer or otherwise convey all or substantially all its assets to any Person, in each case, unless:

(1) either (A) the Company shall be the continuing Person (in the case of a merger), or (B) the successor Person (if other than the Company) formed by or resulting

from such consolidation, amalgamation or merger, or to which such sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the Company is made, (i) shall be a corporation, limited liability company or partnership organized and existing under the laws of the United States of America, any state thereof or the District of Columbia; and (ii) shall, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor Person and delivered to the Trustee, in form satisfactory to the Trustee, expressly assume the due and punctual performance and observance of the payment and other obligations in this Indenture and the outstanding Securities and the Security Documents, on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction, no Default or Event of Default, shall have occurred and be continuing;

(3) the successor Person shall take such action (or agree to take such action) as may be reasonably necessary to cause any property or assets that constitute Collateral owned by or transferred to the successor Person to be subject to the Liens securing the Secured Obligations in the manner and to the extent required under the Secured Debt Documents and shall deliver an Opinion of Counsel as to the enforceability of any amendments, supplements or other instruments with respect to the Secured Debt Documents to be executed, delivered, filed and recorded, as applicable, and such other matters as the Trustee or Collateral Agent, as applicable, may request; and

(4) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such transaction complies with, and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article, and that all conditions precedent herein provided for relating to such transaction have been complied with.

For purposes of the foregoing, any sale, lease, assignment, transfer or other conveyance of all or any of the assets of one or more Subsidiaries of the Company (other than to the Company or another Subsidiary), which, if such assets were owned by the Company would constitute all or substantially all of the Company's assets, shall be deemed to be the conveyance of all or substantially all of the assets of the Company to any Person.

(b) Other than in connection with and pursuant to the express written terms of the Plan of Reorganization or as otherwise permitted under this Indenture, the Operating Partnership shall not, and the Company shall not permit any Subsidiary Guarantor to, sell or otherwise dispose of all or substantially all of the assets of any Subsidiary Guarantor, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person (other than the Company or another Guarantor) unless either:

(1) immediately after giving effect to such transaction or transactions, on a pro forma basis (and treating any Indebtedness which becomes an Obligation of the resulting, surviving or transferee Person as a result of such transaction as having been issued by such Person at the time of such transaction) no Default shall have occurred and be continuing;

(2) the Person acquiring the assets in such sale or disposition or the Person formed by or surviving any such consolidation or merger (if other than such Guarantor) (the “*Successor Guarantor*”) (A) shall be a Person organized and existing under the laws of the jurisdiction under which the Guarantor was organized or under the laws of the United States of America, or any state thereof or the District of Columbia and (B) assumes all obligations of the Guarantor under its Note Guarantee in this Indenture and all Security Documents to which it is a party pursuant to agreements or instruments satisfactory in form to the Trustee;

(3) in the case of the Subsidiary Guarantor, the Successor Guarantor, if applicable, shall take such action (or agree to take such action) as may be reasonably necessary to cause any property or assets that constitute Collateral owned by or transferred to the Successor Guarantor to be subject to the Liens securing the Secured Obligations in the manner and to the extent required under the Secured Debt Documents and shall deliver an Opinion of Counsel as to the enforceability of any amendments, supplements or other instruments with respect to the Secured Debt Documents to be executed, delivered, filed and recorded, as applicable, and such other matters as the Trustee or Collateral Agent, as applicable, may request; and

(4) the Company delivers to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such transaction complies with and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article, and that all conditions precedent herein provided for relating to such transaction have been complied with.

(5) solely in the case of a Subsidiary Guarantor (and not in the case of the Operating Partnership), the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all of the assets of the Guarantor (in each case other than to the Company or a Subsidiary Guarantor) otherwise permitted by Section 4.03 and the other provisions of this Indenture and the Net Available Cash of such sale or other disposition are applied in accordance with Section 4.03 and the other provisions of this Indenture.

SECTION 5.02 REIT May Consolidate, Etc., Only on Certain Terms.

The REIT shall not, in any transaction or series of related transactions, consolidate or amalgamate with or merge into any Person or sell, lease, assign, transfer or otherwise convey all or substantially all its assets to any Person, in each case, unless:

(1) either (A) the REIT shall be the continuing Person (in the case of a merger), or (B) the successor Person (if other than the REIT) formed by or resulting from such consolidation, amalgamation or merger, or to which such sale, lease, assignment, transfer or other conveyance of all or substantially all of the assets of the REIT is made, (i) shall be a corporation, limited liability company or partnership organized and existing under the laws of the United States of America, any state thereof or the District of Columbia; and (ii) shall, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor Person and delivered to the Trustee, in

form satisfactory to the Trustee, expressly assume the due and punctual performance and observance of the payment and other obligations in this Indenture and the Limited Guarantee on the part of the REIT to be performed or observed;

(2) immediately after giving effect to such transaction, no Default or Event of Default, shall have occurred and be continuing; and

(3) the REIT shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, sale, lease, assignment, transfer or other conveyance and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

For purposes of the foregoing, any sale, lease, assignment, transfer or other conveyance of all or any of the assets of one or more Subsidiaries of the REIT (other than to the REIT or another Subsidiary), which, if such assets were owned by the REIT would constitute all or substantially all of the REIT's assets, shall be deemed to be the conveyance of all or substantially all of the assets of the REIT to any Person.

SECTION 5.03 Successor Person Substituted for Company or REIT.

If the Company or the REIT shall, in any transaction or series of related transactions, consolidate or amalgamate with or merge into any Person or sell, lease, assign, transfer or otherwise convey all or substantially all its assets to any Person, in each case in accordance with Section 5.01(a) or Section 5.02, as applicable, the successor Person formed by or resulting from such consolidation, amalgamation or merger or to which such sale, lease, assignment, transfer or other conveyance of all or substantially all of the properties and assets of the Company or the REIT, as applicable, is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Company or the REIT, as applicable, under this Indenture, with the same effect as if such successor Person had been named as the Company or the REIT, as applicable, herein; and thereafter, except in the case of a lease, the predecessor Person shall be released from all obligations and covenants under this Indenture and all outstanding Securities and the Security Documents. The Trustee shall enter into a supplemental indenture to evidence the succession and substitution of such Person and such release of the Company or the REIT, as applicable.

ARTICLE 6 Defaults and Remedies

SECTION 6.01 Events of Default. An "*Event of Default*" occurs if one of the following shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be involuntary or be effected by operation of law):

(1) the Company defaults in any payment of interest on any Security when the same becomes due and payable, and such default continues for a period of 30 days;

(2) the Company (A) defaults in the payment of the principal of, or premium on, if any, any Security when the same becomes due and payable at its Stated Maturity,

upon optional or mandatory redemption, upon declaration of acceleration or otherwise, or (B) fails to purchase Securities when required pursuant to this Indenture;

(3) [Reserved];

(4) the Company, the REIT (solely with respect to the Limited Guarantee) or any Guarantor fails to comply with any of its agreements contained in the Securities or this Indenture (other than those referred to in clause (1) or (2) above or (14) or (15) below) or any Security Document and such failure continues for 30 days after the notice specified below; provided, that in the case of a failure to comply with Section 4.12 of this Indenture, such period of continuance of such default shall be 90 days after the notice specified below;

(5) Any Indebtedness (other than the Other Secured Notes) of the Company, the REIT, any Guarantor or any Significant Subsidiary that is or becomes recourse to the Company, the REIT, any Guarantor or any Significant Subsidiary is not paid within any applicable grace or cure period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$150.0 million, or its foreign currency equivalent at the time, and such acceleration continues for 30 days after the notice specified below;

(6) the Company, any Guarantor, the REIT or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;
or

(D) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency;

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company, the REIT, any Guarantor or any Significant Subsidiary in an involuntary case;

(B) appoints a Custodian of the Company, the REIT, any Guarantor or any Significant Subsidiary or for any substantial part of its property; or

(C) orders the winding up or liquidation of the Company, the REIT, any Guarantor or any Significant Subsidiary;

or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 60 days;

(8) (i) any judgment or decree for the payment of money in excess of \$25.0 million or its foreign currency equivalent at the time such judgment or decree is entered against the Company or any Significant Subsidiary (net of any amounts which are covered by enforceable insurance policies issued by solvent carriers or by third party indemnities), remains outstanding for a period of 60 consecutive days following the entry of such judgment or decree and is not discharged, waived or the execution thereof stayed[, (ii) any judgment or decree for the payment of money in excess of \$150.0 million or its foreign currency equivalent at the time such judgment or decree is entered against the REIT or the Operating Partnership (net of any amounts which are covered by enforceable insurance policies issued by solvent carriers or by third party indemnities), remains outstanding for a period of 60 consecutive days following the entry of such judgment or decree and is not discharged, waived, the execution thereof stayed or otherwise bonded, or (iii) any warrant, writ of attachment, execution or similar process shall be issued against any property of the REIT or the Operating Partnership which exceeds, individually or together with all other such warrants, writs, executions and processes, \$150.0 million and such warrant, writ, execution or process shall not be paid, discharged, vacated, stayed or bonded for a period of 60 consecutive days];

(9) any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases to be in full force and effect (other than in accordance with the terms of such Note Guarantee) or any Guarantor denies or disaffirms its obligations under its Note Guarantee (other than in accordance with the terms of such Note Guarantee);

(10) the occurrence of either of the following:

(A) except as permitted by the Security Documents, any Lien purported to be granted under any Security Document on Collateral, individually or in the aggregate, having a Fair Market Value in excess of \$50.0 million, ceases to be an enforceable and perfected first priority Lien, subject to the Collateral Agency and Intercreditor Agreement and Permitted Collateral Liens and such default is not remedied within 60 days after the notice specified below; or

(B) the Company or any other Grantor, or any Person acting on behalf of any of them, denies or disaffirms, in writing, any obligation of the Company or any other Grantor set forth in or arising under any Security Document establishing Liens securing the Secured Obligations;

(11) the occurrence and continuance of an “Event of Default” under (and as defined in) the Other Secured Notes Indenture;

(12) default under any Indebtedness of or Guarantee by the Operating Partnership, the REIT, the New Bank Claim Borrower or Subsidiary of the Operating Partnership (other than the Company or a Subsidiary of the Company) with an aggregate principal amount in excess of \$150.0 million, whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, unless the New Bank Claim Borrower or the Operating Partnership has agreed to a foreclosure or similar arrangement for any property that does not secure or constitute collateral under the New Bank Term Loan Facility;

(13) the Limited Guarantee is not (or is claimed by the REIT not to be) in full force and effect with respect to the Securities;

(14) failure by the Company to comply with its obligation to exchange the Securities in accordance with the terms of this Indenture upon exercise of a Holder's exchange right, and such default continues for five Business Days; or

(15) failure by the Company to provide any notice with respect to a Make-Whole Fundamental Change or a Fundamental Change in accordance with the provisions of Section 13.02(d) or Section 14.02(d), as applicable, within the time so required to provide such notice, and such failure continues for three Business Days.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term "*Bankruptcy Law*" means Title 11, United States Code, or any similar Federal or state law for the relief of debtors. The term "*Custodian*" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clauses (4) or (5) or (10)(A) is not an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the outstanding Securities notify the Company of the Default and the Company does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default".

The Company shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officer's Certificate of any Event of Default under clauses (1), (2), (4), (5), (8), (9), (10), (11), (12), (13), (14) and (15), its status and what action the Company is taking or proposes to take with respect thereto.

SECTION 6.02 Acceleration. (a) If an Event of Default (other than an Event of Default specified in Section 6.01(6) or (7) with respect to the Company) occurs and is continuing, upon receipt by the Trustee of written direction from the Holders of a majority in principal amount of the Securities, the Trustee by written notice to the Company, or the Holders of at least 25% in principal amount of the Securities by written notice to the Company and the Trustee, may declare the principal of and accrued but unpaid interest and relevant or applicable premium, Acceleration Premium or redemption price on all the Securities to be due and payable. Upon such a declaration, such principal, interest and applicable premium, Acceleration Premium or redemption price shall be due and payable immediately. If an Event of Default specified in Section 6.01(6) or (7) with respect to the Company occurs, the principal of and interest and applicable premium, Acceleration Premium or redemption price on all the Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in principal amount of the Securities by notice to the Trustee and the Company may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except

nonpayment of principal or interest that has become due solely because of acceleration. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

(b) Notwithstanding the foregoing, if an Event of Default under Section 6.01(5) has occurred and is continuing, such Event of Default and any consequential acceleration (to the extent not in violation of any applicable law or in conflict with any judgment or decree of a court of competent jurisdiction) shall be automatically rescinded if (i) the Indebtedness that is the subject of such Event of Default under Section 6.01(5) has been repaid or (ii) if the default relating to such Indebtedness is waived by the holders of such Indebtedness or cured, and if such Indebtedness has been accelerated, then the holders thereof have rescinded their declaration of acceleration with respect thereto, and (iii) any other existing Events of Default, except nonpayment of principal, premium or interest on the Securities that became due solely because of the acceleration of the Securities, have been cured and waived.

(c) (i) If the Securities are accelerated or otherwise become due prior to their Stated Maturity, in each case, in respect of any Event of Default specified in Section 6.01(6) or (7) with respect to the Company (including the acceleration of claims by operation of law), the amount of principal of, accrued and unpaid interest and premium on the Securities that becomes due and payable shall equal 100% of the principal amount of the Securities plus the Acceleration Premium plus accrued and unpaid interest, if any.

(ii) In any such case the Acceleration Premium shall constitute part of the Notes Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement the Company and the Guarantors on the one hand and the Holders on the other hand as to a reasonable calculation of each Holder's lost profits as a result thereof. Any Acceleration Premium payable pursuant to the above shall be presumed to be the liquidated damages sustained by each Holder as the result of the acceleration, and each of the Company and the Guarantors agrees that it is reasonable under the circumstances. The Acceleration Premium shall also be payable in the event the Securities (and/or this Indenture) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH OF THE COMPANY AND THE GUARANTORS EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREMIUMS IN CONNECTION WITH ANY SUCH ACCELERATION, ANY RESCISSION OF SUCH ACCELERATION OR THE COMMENCEMENT OF ANY BANKRUPTCY OR INSOLVENCY EVENT. Each of the Company and the Guarantors expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Acceleration Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Acceleration Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Holders, the Company and the Guarantors giving specific consideration in this transaction for such agreement to pay the Acceleration Premium; and (D) the Company and the Guarantors shall be estopped hereafter from claiming differently than as agreed to in this paragraph. Each of the Company and the Guarantors expressly acknowledges that its agreement to pay the Acceleration Premium to the Holders as herein described is a material inducement to Holders to purchase the Securities.

SECTION 6.03 Other Remedies. Subject to the Collateral Agency and Intercreditor Agreement, if an Event of Default occurs and is continuing and subject to the Trustee's receipt of written direction from the Holders of a majority in principal amount of the Securities, the Trustee may pursue any available remedy to collect the payment of principal of or interest and premium on the Securities or to enforce the performance of any provision of the Securities, this Indenture and the Security Documents.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent required by law, all available remedies are cumulative.

SECTION 6.04 Waiver of Past Defaults. The Holders of a majority in principal amount of the Securities by written notice to the Trustee (including, without limitation, in connection with a purchase of, or tender offer or exchange offer for, Securities) may waive an existing Default and its consequences except a Default (a) in the payment of the principal of or interest and premium on a Security, (b) arising from the failure to redeem or purchase any Security when required pursuant to this Indenture or (c) in respect of a provision that under Section 9.02 cannot be amended without the consent of each Securityholder affected. When a Default is waived, it is deemed cured and the Company, the Trustee and the Securityholders shall be restored to their former position and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05 Control by Majority. The Holders of a majority in principal amount of the Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other Securityholders or would involve the Trustee in personal liability; provided, however, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses, liabilities and expenses caused by taking or not taking such action.

SECTION 6.06 Limitation on Suits. Except to enforce the right to receive payment of principal, premium or interest when due, no Securityholder may pursue any remedy with respect to this Indenture or the Securities unless:

- (1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (2) the Holders of at least 25% in principal amount of the Securities make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee security or indemnity acceptable to the Trustee in its sole discretion against any loss, liability or expense;

(4) the Trustee does not comply with the written request within 60 days after receipt of the request and the offer of security or indemnity; and

(5) the Holders of a majority in principal amount of the Securities do not give the Trustee a written direction inconsistent with the request during such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder. In the event that the Definitive Securities are not issued to any beneficial owner promptly after the Registrar has received a request from the Holder of a Global Security (as defined in the Appendix) to issue such Definitive Securities to such beneficial owner of its nominee, the Company expressly agrees and acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to this Indenture, the right of such beneficial holder of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial holder's Securities as if such Definitive Securities had been issued.

SECTION 6.07 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest and premium on the Securities held by such Holder, on the respective due dates expressed in the Securities (or, in the case of a redemption, on the redemption date or, in the case of a purchase, on the Fundamental Change Purchase Date, Asset Sale Excess Proceeds Offer Purchase Date or Collateral Release Excess Proceeds Offer Purchase Date) and to exchange the Securities for the consideration and in the manner specified in Article 13, or to bring suit for the enforcement of any such payment and right to exchange, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08 Collection Suit by Trustee. Subject to the Collateral Agency and Intercreditor Agreement, if an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.07, and against the REIT for any amounts owed by it under the terms of the Limited Guarantee.

SECTION 6.09 Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, the Collateral Agent and the Securityholders allowed in any judicial proceedings relative to the Company, the REIT, its creditors or its property and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent and each of their agents and counsel, and any other amounts due to the Trustee or Collateral Agent, as applicable, under Section 7.07.

No provision of this Indenture shall be deemed to authorize the Trustee or Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, compromise, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee or Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10 Priorities. Subject to the Collateral Agency and Intercreditor Agreement, if the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the Trustee, the Collateral Agent and their agents for amounts due under Section 7.07;

SECOND: to Securityholders for amounts due and unpaid on the Securities for principal and interest ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Company as provided in a written direction from the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. At least 15 days before such record date, the Company shall mail to each Securityholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate principal amount of the Securities.

SECTION 6.12 Waiver of Stay or Extension Laws. The Company (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7
Trustee

SECTION 7.01 Duties of Trustee. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of negligence or wilful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own wilful misconduct as determined by a final non-appealable order of a court of competent jurisdiction, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.

SECTION 7.02 Rights of Trustee.

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any such agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be deemed to have notice of any Default or Event of Default, except a Default under Sections 6.01(1) or 6.01(2) (but only if the Trustee is also the Paying Agent), unless written notice of any event which is in fact such a Default or Event of Default is received by a Trust Officer at its office described in Section 16.02 herein from the Company or the Holders of 25% in aggregate principal amount of the outstanding Securities, and such notice references the specific Default or Event of Default, the Securities and this Indenture and states that it is a "Notice of Default". In the absence of any such notice, the Trustee may conclusively assume that no such Default or Event of Default exists.

(g) In no event shall the Trustee be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(h) The Trustee may conclusively rely on and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document (whether in its original, electronic or facsimile form) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be

enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder, including as Collateral Agent.

(j) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or the other Note Documents at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered, and if requested, provided, to the Trustee security or indemnity satisfactory to the Trustee against the losses, liabilities and expenses which may be incurred therein or thereby.

(k) The Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is actually known to a Trust Officer of the Trustee or unless written notice of such fact or matter is received by the Trustee at the corporate trust office of the Trustee specified in Section 16.02.

(l) Whenever in the administration of this Indenture or the other Note Documents the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder or thereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of negligence or wilful misconduct on its part, conclusively rely upon an Officer's Certificate.

(m) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgement, bond, debenture, note, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and the Trustee will incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(n) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(o) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture or the other Note Documents.

(p) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(q) The permissive rights of the Trustee enumerated hereunder shall not be construed as duties.

Notwithstanding anything to the contrary in this Indenture, other than this Indenture and the Securities, the Trustee will have no duty to know or inquire as to the performance or non-performance of any provision of any other agreement, instrument, or contract, nor will the Trustee be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or contract, whether or not a copy of such agreement has been provided to the Trustee.

SECTION 7.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity (including in its capacity as the Collateral Agent) may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee or Collateral Agent. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as Trustee (if this Indenture has been qualified under the TIA) or resign. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

SECTION 7.04 Trustee's Disclaimer. The Trustee shall not be (A) responsible for and makes no representation as to the validity or adequacy of this Indenture, the Securities or any other Note Documents, (B) accountable for the Company's use of its proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision of this Indenture, (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee and (D) responsible for any statement or recital in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

SECTION 7.05 Notice of Defaults. If a Default occurs and is continuing of which the Trustee has received written notice, the Trustee shall send to each Securityholder notice of the Default within 90 days after it occurs. Notwithstanding the immediately preceding sentence, except in the case of a Default involving the payment of principal of or interest or premium on any Security (including payments pursuant to the mandatory redemption provisions of such Security, if any), the Trustee may withhold the notice if and so long as the Trustee in good faith determines that withholding the notice is not opposed to the interests of the Securityholders.

SECTION 7.06 TIA and Listings. As promptly as practicable after each August 15 beginning with August 15, 2022, the Trustee shall mail to each Securityholder a brief report dated as of August 15 that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). During the same time period specified above, the Trustee also shall comply with TIA § 313(b), which section relates to the release or substitution of certain property from the Lien of this Indenture and advances made by the Trustee. The Trustee will also transmit by mail all reports as required by TIA § 313(c).

If this Indenture has been qualified under the TIA, a copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each stock exchange (if any) on which the Securities are listed in accordance with TIA § 313(d). The Company agrees to notify promptly the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

SECTION 7.07 Compensation and Indemnity. The Company shall pay to the Trustee from time to time reasonable compensation for its services under this Indenture and the Securities as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall promptly reimburse the Trustee upon request for all reasonable disbursements, advances and expenses Incurred or made by it, including costs of collection, in addition to the

compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company shall indemnify the Trustee and its respective officers, directors, employees and agents against any and all loss, liability or expense (including attorneys' fees) Incurred by any of them in connection with the acceptance or administration of this trust and the performance of its duties hereunder. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense Incurred by the Trustee through the Trustee's own wilful misconduct or negligence.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities.

The Company's payment obligations pursuant to this Section shall survive the discharge of this Indenture and the resignation and removal of the Trustee hereunder. When the Trustee Incurs expenses after the occurrence of a Default specified in Section 6.01(6) or (7) with respect to the Company, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

The Trustee will comply with the provisions of TIA § 313(b)(2) to the extent applicable.

SECTION 7.08 Replacement of Trustee. The Trustee may resign at any time by so notifying the Company. The Holders of a majority in principal amount of the Securities may remove the Trustee by so notifying the Trustee in writing with 30 days' prior written notice and may appoint a successor Trustee. The Company shall remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns, is removed by the Company or by the Holders of a majority in principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company and the REIT. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its

succession to Securityholders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by a Securityholder of at least six months, fails to comply with Section 7.10, such Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

SECTION 7.09 Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee and shall have all of the rights, powers and duties of the Trustee under this Indenture.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture and any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.10 Eligibility; Disqualification. There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100.0 million as set forth in its most recent published annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

SECTION 7.11 Preferential Collection of Claims Against Company. The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE 8
Discharge of Indenture; Defeasance

SECTION 8.01 Discharge of Liability on Securities; Defeasance. (a) This Indenture and the other Note Documents (insofar as related to this Indenture and the Securities) shall, subject to Section 8.01(c), cease to be of further effect and all Collateral shall be released from the Liens securing the Notes Obligations as to all outstanding Securities when both (x) either (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities not theretofore delivered to the Trustee for cancellation (1) have become due and payable, whether at maturity or on a redemption date as a result of the mailing of a notice of redemption pursuant to Article 3 hereof or (2) will become due and payable within one year at the Stated Maturity or within 60 days as the result of the giving of any irrevocable and unconditional notice of redemption pursuant to Article 3 hereof, and, in the case of clause (ii), the Company irrevocably deposits with the Trustee cash in U.S. dollars or non-callable U.S. Government Obligations or a combination thereof, in amounts sufficient to pay at maturity or upon redemption all outstanding Securities, including interest and premium, if any, thereon to maturity or such redemption date (other than Securities replaced pursuant to Section 2.07), and (y) the Company pays all other sums payable hereunder by the Company. The Trustee and Collateral Agent shall acknowledge satisfaction and discharge of this Indenture (subject to Section 8.01(c)) and the other Note Documents (insofar as related to this Indenture and the Securities) on demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 8.01(c) and 8.02, the Company at any time may terminate (1) all its obligations under the Securities and this Indenture ("*legal defeasance option*") or (2) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 and 4.17 and the operation of Sections 6.01(5), 6.01(6), 6.01(7), 6.01(8), 6.01(9), 6.01(10), 6.01(11), 6.01(12), 6.01(13), 6.01(14) and 6.01(15) (but, in the case of Sections 6.01(6) and 6.01(7), with respect only to Significant Subsidiaries and Guarantors) ("*covenant defeasance option*"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default with respect thereto. If the Company exercises its covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Sections 6.01(5), 6.01(6), 6.01(7), 6.01(8), 6.01(9), 6.01(10), 6.01(11), 6.01(12), and 6.01(13) (but, in the case of Sections 6.01(6) and 6.01(7), with respect only to Significant Subsidiaries and Guarantors). If the Company exercises its legal defeasance option or its covenant defeasance option, (i) each Guarantor, if any, shall be released from all its obligations with respect to its Note Guarantee and (ii) the REIT shall be released from all its obligations with respect to its Limited Guarantee, in each case except to the extent necessary to guarantee any of the Company's continuing obligations pursuant to Section 8.01(c); and (iii) all Collateral shall be released from the Liens securing the Notes Obligations.

Upon satisfaction of the conditions set forth herein, and satisfaction of the other covenants or obligations under the other Note Documents (insofar as related to the Securities and this Indenture), and upon request of the Company, the Trustee shall acknowledge in writing the

discharge of those obligations that the Company terminates and the Collateral shall be released as to the Notes Obligations.

(c) Notwithstanding clauses (a) and (b) above, the Company's obligations in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 7.07 and 7.08 and in this Article 8 and Articles 13 and 15 and the Company's rights in Article 15 shall survive until the Securities have been paid or exchanged for Common Stock in full. Thereafter, the Company's obligations in Sections 7.07, 8.04 and 8.05 shall survive.

SECTION 8.02 Conditions to Defeasance. The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(1) the Company irrevocably deposits with the Trustee cash in U.S. dollars or U.S. Government Obligations or a combination thereof for the payment of principal of and interest on the Securities to maturity or redemption, as the case may be;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest and premium when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest and premium when due on all the Securities to maturity or redemption, as the case may be;

(3) 123 days pass after the deposit is made and during the 123-day period no Default specified in Sections 6.01(6) or (7) with respect to the Company occurs which is continuing at the end of the period;

(4) the deposit does not constitute a default under any other agreement binding on the Company;

(5) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(6) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that since the Issue Date (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred; *provided* that, notwithstanding the foregoing, the Opinion of Counsel required by the immediately preceding sentence with respect to a legal defeasance need not be delivered if all of the Securities not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable at their Stated Maturity within one year under arrangements satisfactory to the

Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

(7) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(8) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities as contemplated by this Article 8 have been complied with.

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date in accordance with Article 3.

SECTION 8.03 Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

SECTION 8.04 Repayment to the Company. The Trustee and the Paying Agent shall promptly turn over to the Company upon written request any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Company for payment as general creditors.

SECTION 8.05 Indemnity for Government Obligations. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.06 Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's, the REIT's and each Guarantor's obligations under this Indenture, the Securities and other Note Documents (insofar as related to this Indenture and the Securities) shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; provided, however, that, if the Company has made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the

rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE 9 Amendments

SECTION 9.01 Without Consent of Holders. The Company, the REIT, the Guarantors, the Trustee and, in the case of any Security Document, the Collateral Agent may amend any of this Indenture, the Securities or the other Note Documents without notice to or consent of any Securityholder:

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to comply with or effect (including, without limitation, by execution of new Security Documents with respect to any transferee or surviving person and releases of any transferor from any applicable Security Documents) the provisions of Article 5;
- (3) to provide for uncertificated Securities in addition to or in place of certificated Securities; provided, however, that the uncertificated Securities are issued in registered form for purposes of Section 163(f) of the Code;
- (4) to provide for any Guarantee of the Securities (including a Limited Guarantee if required pursuant to Section 5.02 of this Indenture), to further secure the Securities (including by any amendment or supplement to any Security Document (or schedule thereto)) or to confirm and evidence the release, termination or discharge of any Note Guarantee of or the REIT's Limited Guarantee of the Securities or any Lien securing the Securities or any Note Guarantee when such release, termination or discharge is permitted by Section 10.05 or Section 11.05 or Section 13.02 or otherwise by this Indenture;
- (5) to add to the covenants of the Company, the REIT or any Guarantor for the benefit of the Holders or to surrender any right or power herein conferred upon the Company, the REIT or any Guarantor;
- (6) to comply with any requirements of the SEC in connection with qualifying this Indenture under the TIA;
- (7) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Securities; provided, however, that (a) compliance with this Indenture as so amended would not result in Securities being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer Securities;
- (8) to make, complete or confirm any grant of Collateral permitted or required by any of the Note Documents;
- (9) to release or subordinate Liens on Collateral in accordance with the Security Documents;

- (10) to comply with the requirements of any securities depository with respect to the Securities;
- (11) with respect to the Security Documents, as provided in the Collateral Agency and Intercreditor Agreement;
- (12) to evidence and provide for the acceptance and appointment (x) under this Indenture of a successor Trustee or Collateral Agent hereunder pursuant to the requirements hereof or (y) under the Security Documents of a successor Collateral Agent thereunder pursuant to the requirements thereof;
- (13) to make any change that does not adversely affect the rights of any Holder;
- (14) to evidence the succession of another Person to the REIT and the assumption by any such successor of the covenants of the REIT contained herein and in the Limited Guarantee;
- (15) to provide for exchange rights of Holders if any Merger Event occurs or otherwise comply with the provisions of the Indenture in the event of a Merger Event;
- (16) to adjust the Exchange Rate in accordance with the terms of the Indenture;
- (17) to effect amendments, supplements or modifications to the Security Documents (a) to add or remove other parties to the Other Secured Notes Indenture or the Security Documents in respect of any Other Secured Notes Obligations permitted to be incurred under this Indenture and the Collateral Agency and Intercreditor Agreement or (b) at the direction of the Other Secured Notes Trustee, that (i) only affect the rights of the Other Secured Noteholders, (ii) are administrative or ministerial in nature or correct typographical errors or omissions, (iii) have only the effect of preserving, perfecting or establishing the priority of the Liens on the Collateral as contemplated by the Security Documents or the rights of the Collateral Agent therein or (iv) do not otherwise materially adversely affect the rights of Holders of the Securities; or
- (18) to implement the express written terms of the Plan of Reorganization.

Upon the written request of the Company accompanied by a Board Resolution of the Company authorizing the execution of any such amended or supplemental indenture or any amendment or supplement to any Security Document, and upon receipt by the Trustee of the documents described in Section 9.06 hereof, the Trustee shall join with the Company, the REIT and the Guarantors in the execution of (and (in the case of any Security Document) shall direct the Collateral Agent to execute (and deliver to the Collateral Agent its written consent to the execution by the Collateral Agent of)) such amended or supplemental indenture or such Security Document amendment or supplement authorized or permitted by the terms of this Indenture, unless such amended or supplemented indenture or such Security Document amendment or supplement affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into (or, in the case of any Security Document, so direct and deliver its consent to the Collateral Agent with respect to) such amended or supplemental indenture or such Security Document amendment or supplement.

After an amendment under this Section becomes effective, the Company shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.02 With Consent of Holders. The Company, the REIT, the Guarantors, the Trustee and the Collateral Agent (in the case of any Security Document), if applicable, may amend this Indenture, the Securities or the other Note Documents with the written consent of the Holders of at least a majority in principal amount of the Securities then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Securities), and any past default or compliance with any provisions of this Indenture, the Securities or the other Note Documents may also be waived with the consent of the Holders of at least a majority in principal amount of the Securities then outstanding. However, without the consent of each Securityholder affected thereby, an amendment or waiver may not:

- (1) reduce the amount of Securities whose Holders must consent to an amendment or waiver;
- (2) reduce the rate of or extend the time for payment of interest on any Security;
- (3) reduce the principal of or extend the Stated Maturity of any Security;
- (4) reduce the amount payable upon the redemption of the Securities or change the time at which any Security may be redeemed as described in Section 3.07(b);
- (5) (a) after the obligation of the Company to make an Asset Sale Excess Proceeds Offer with respect to an Asset Sale has arisen in accordance with Section 4.03, reduce the Asset Sale Excess Proceeds Offer Price or amend or modify in any manner adverse to the rights of the Holders of the Securities the Company's obligation to pay the Asset Sale Excess Proceeds Offer Price; or (b) after the obligation of the Company to make an Collateral Release Excess Proceeds Offer with respect to an Release Trigger Event has arisen in accordance with Section 4.04, reduce the Collateral Release Excess Proceeds Offer Price or amend or modify in any manner adverse to the rights of the Holders of the Securities the Company's obligation to pay the Collateral Release Excess Proceeds Offer Price;
- (6) make any Security payable in money other than that stated in the Security;
- (7) impair the right of any Holder to receive payment of principal of and interest and relevant or applicable premium, Acceleration Premium or redemption price on such Holder's Securities or to receive payment or delivery of Common Stock (including, in connection with a Make-Whole Fundamental Change, Additional Shares) or cash or other consideration, together with cash in lieu thereof in respect of any fractional shares, due upon exchange of such Holder's Securities, in each case, on or after the due dates therefor or to institute suit for the enforcement of any payment or delivery on or with respect to such Holder's Securities;

- (8) expressly subordinate the Securities or any Note Guarantee in right of payment or otherwise modify the ranking in right of payment thereof to any other Indebtedness of the Company, the REIT or the Guarantors;
- (9) make any change in the provisions of the Collateral Agency and Intercreditor Agreement or this Indenture dealing with the application of proceeds of the Collateral that would adversely affect the Securityholders;
- (10) make any change in Section 6.04 or 6.07 or the second sentence of this Section;
- (11) make any change in, or release other than in accordance with the provisions of this Indenture, any Note Guarantee that would adversely affect the Securityholders;
- (12) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, the Securities (except a rescission of acceleration of the Securities by the Holders of at least a majority in aggregate principal amount of the then outstanding Securities and a waiver of the payment default that resulted from such acceleration); or
- (13) reduce the Fundamental Change Purchase Price of any Security or amend or modify in any manner adverse to the rights of the Holders of the Securities the Company's obligation to pay the Fundamental Change Purchase Price.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment or waiver under this Indenture by any Holder of Securities given in connection with a tender of such Holder's Securities shall not be rendered invalid by such tender.

In addition, any amendment to, or waiver of, the provisions of the Note Documents that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Securities or subordinating Liens securing the Securities (except as permitted by the terms of the Note Documents) will require the consent of the Holders of at least 66-2/3% in principal amount of the Securities then outstanding.

Upon the written request of the Company and the REIT accompanied by a resolution of the Board of Directors of the Company and a resolution of the Board of Directors of the REIT authorizing the execution of any supplemental indenture entered into to effect any such amendment, supplement or waiver permitted under the terms of this Section, and upon receipt by the Trustee (and the Collateral Agent to the extent applicable) of the documents described in Section 9.06, the Trustee (and the Collateral Agent to the extent applicable) shall join with the Company and the REIT in the execution of such supplemental indenture or supplement or amendment to the Note Documents. After an amendment under this Section becomes effective, the Company shall send to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.03 Compliance with Trust Indenture Act. Subject to Section 16.06, every amendment or supplement to this Indenture or the Securities shall be set forth in a supplemental indenture hereto that complies with the TIA as then in effect.

A consent to any amendment, supplement or waiver under this Indenture or any amendment or supplement to any Note Document by any Holder given in connection with a purchase, tender or exchange of such Holder's Securities shall not be rendered invalid by such purchase, tender or exchange.

SECTION 9.04 Revocation and Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Security shall be a continuing consent and shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver becomes effective upon the execution of such amendment or waiver by the Trustee.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless consent from the Holders of the principal amount of Securities required hereunder for such amendment or waiver to be effective also shall have been given and not revoked within such 120-day period. After an amendment or waiver becomes effective, it will bind every Holder, unless it makes a change described in any of clauses (1) through (13) of Section 9.02, in which case, the amendment or waiver will bind only each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same Indebtedness as the consenting Holder's Security.

SECTION 9.05 Notation on or Exchange of Securities. If an amendment changes the terms of a Security, the Trustee may require the Securityholder to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

SECTION 9.06 Trustee To Sign Amendments. The Trustee shall sign (or, in the case of any Security Document, the Trustee shall direct the Collateral Agent to sign) any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee or the Collateral Agent as applicable. If an amendment, supplement or waiver adversely affects the rights, duties,

liabilities or immunities of the Trustee or Collateral Agent, the Trustee or the Collateral Agent, as applicable, may but need not sign (or, in the case of any Security Document, the Trustee, may, but need not, direct the Collateral Agent to sign) such amendment, supplement or waiver. In signing (or so directing the Collateral Agent to sign) any amendment, supplement or waiver, each of the Trustee and the Collateral Agent shall be entitled to receive indemnity satisfactory to it and to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and the other Note Documents.

SECTION 9.07 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 9.07.

Without limiting the generality of this Section, unless otherwise provided in or pursuant to this Indenture, (i) a Holder, including a Depository or its nominee that is a Holder of a Global Security, may give, make or take, by an agent or agents duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be given, made or taken by Holders, and a Depository or its nominee that is a Holder of a Global Security may duly appoint in writing as its agent or agents members of, or participants in, such Depository holding interests in such Global Security in the records of such Depository; and (ii) with respect to any Global Security the Depository for which is The Depository Trust Company ("*DTC*"), any consent or other action given, made or taken by an "agent member" of DTC by electronic means in accordance with the Automated Tender Offer Procedures system or other customary procedures of, and pursuant to authorization by, DTC shall be deemed to constitute the "Act" of the Holder of such Global Security, and such Act shall be deemed to have been delivered to the Company and the Trustee upon the delivery by DTC of an "agent's message" or other notice of such consent or other action having been so given, made or taken in accordance with the customary procedures of DTC.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a Person acting in a capacity other than such Person's individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the

authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Register.

SECTION 9.08 Amendment Affecting Collateral Agent. No amendment or supplement to this Indenture or any Security Document shall adversely affect the rights, duties, liabilities or immunities of the Collateral Agent without the written consent of the Collateral Agent.

ARTICLE 10

Note Guarantees

SECTION 10.01 Guarantees. Each Guarantor hereby unconditionally and irrevocably guarantees, jointly and severally, to each Holder, the Trustee and the Collateral Agent and its successors and assigns (a) the full and punctual payment of principal of and interest and premium on the Securities when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Company under this Indenture, the Securities and the other Note Documents and (b) the full and punctual performance within applicable grace periods of all other obligations of the Company under this Indenture, the Securities and the other Note Documents (all the foregoing being hereinafter collectively called the “*Guaranteed Obligations*”). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Guarantor and that such Guarantor will remain bound under this Article 10 notwithstanding any extension or renewal of any Obligation.

Each Guarantor waives presentation to, demand of, payment from and protest to the Company of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Securities or the Guaranteed Obligations. The obligations of each Guarantor hereunder shall not be affected by (1) the failure of any Holder or the Trustee or the Collateral Agent to assert any claim or demand or to enforce any right or remedy against the Company or any other Person (including any Guarantor) under any of the Note Documents or any other agreement or otherwise; (2) any extension or renewal of any Note Document; (3) any rescission, waiver, amendment or modification of any of the terms or provisions of the Note Documents or any other agreement; (4) the release of any security held by any Holder, the Trustee or the Collateral Agent for the Guaranteed Obligations or any of them; (5) the failure of any Holder, or the Trustee and Collateral Agent to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (6) except, as set forth in Section 10.05, any change in the ownership of such Guarantor.

Each Guarantor further agrees that its Note Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the Trustee to any security held for payment of the Guaranteed Obligations.

Except as expressly set forth in Sections 8.01, 10.02 or 10.05, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever

or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Securities or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest and premium on any Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Company or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder or the Trustee has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Company to pay the principal of or interest and premium on any Notes Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Notes Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders, the Trustee or the Collateral Agent, as applicable, an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations, (B) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by law) and (C) all other monetary Guaranteed Obligations of the Company to the Holders, the Trustee or the Collateral Agent.

Each Guarantor further agrees that, as between it, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the Guaranteed Obligations hereby may be accelerated as provided in Article 6 for the purposes of such Guarantor's Note Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) Incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this Section.

SECTION 10.02 Limitation on Liability. Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

SECTION 10.03 No Waiver. Neither a failure nor a delay on the part of either the Trustee, the Collateral Agent or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee, the Collateral Agent and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.04 Note Guarantee Evidenced by Indenture; No Notation of Note Guarantee. The Note Guarantee of any Guarantor shall be evidenced solely by its execution and delivery of this Indenture (or, in the case of any Guarantor that is not party to this Indenture on the Issue Date, a Guaranty Supplemental Indenture thereto) and not by an endorsement on, or attachment to, any Security of any Note Guarantee or notation thereof. To effect any Note Guarantee of any Guarantor not a party to this Indenture on the Issue Date, such future Guarantor shall execute and deliver a Guaranty Supplemental Indenture substantially in the form of Annex A hereto, which Guaranty Supplemental Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each Guarantor hereby agrees that its Note Guarantee set forth in Section 10.01 hereof shall be and remain in full force and effect notwithstanding any failure to endorse on any Security a notation of such Note Guarantee.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantees set forth in this Indenture on behalf of each of the Guarantors.

SECTION 10.05 Release of Guarantor. A Guarantor will be automatically and unconditionally released from its obligations under this Article 10 (other than any obligation that may have arisen under Section 10.06):

- (1) solely in the case of a Subsidiary Guarantor (and not in the case of the Operating Partnership), in connection with any sale or other disposition of the Capital Stock of such Subsidiary Guarantor or such Subsidiary Guarantor's direct or indirect parent (including by way of merger or consolidation) other than to the Company or a Subsidiary of the Company, if such transaction at the time of such disposition complies with Section 4.03 hereof and the Subsidiary Guarantor ceases to be a Subsidiary of the Company as a result of such transaction;
- (2) if the Company effects either its legal defeasance option or its covenant defeasance option in accordance with Section 8.01(b) hereof or if it satisfies and discharges this Indenture in accordance with Section 8.01(a) hereof;
- (3) any Subsidiary Guarantor becoming an Excluded Non-Guarantor Subsidiary;
- (4) upon the merger, amalgamation or consolidation or liquidation of any Subsidiary Guarantor with and into the Company or another Subsidiary Guarantor, in each case in compliance with the applicable provisions of this Indenture or upon the liquidation

of such Guarantor following the transfer of all of its assets to the Company or another Subsidiary Guarantor; provided that the Company or Subsidiary Guarantor acquiring any assets of such Subsidiary Guarantor upon such merger, amalgamation or consolidation or liquidation shall comply with Section 4.14 with respect to such assets and such merger, amalgamation or consolidation or liquidation shall comply with Section 5.01; or

(5) any Subsidiary Guarantor (other than any Category 1 Subsidiary), upon the Collateral Release/Covenant Revision Trigger Date.

At the request of the Company, upon delivery by the Company to the Trustee of an Officer's Certificate to the effect that any of the conditions described in the foregoing clauses (1) — (5) has occurred, the Trustee and the Collateral Agent, as applicable shall execute and deliver such instrument reasonably requested by the Company or such Guarantor evidencing such release.

SECTION 10.06 Contribution. Each Guarantor agrees that, until the indefeasible payment and satisfaction in full in cash of all applicable obligations under the Securities, the Note Guarantees, this Indenture and the Security Documents, such Guarantor waives any claim, and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by such guarantor of its Note Guarantee, whether by subrogation or otherwise, against either the Company or any other Guarantor. Each Guarantor agrees that all Indebtedness and other monetary obligations so arising owed to such Guarantor by the Company or any other Guarantor shall be fully subordinated to the indefeasible payment in full in cash of the obligations of the Company or such other Guarantor, as applicable, with respect to the Securities, the Note Guarantees, this Indenture and the Security Documents. Subject to the two preceding sentences, each Guarantor that makes a payment under its Note Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

ARTICLE 11

Collateral and Security

SECTION 11.01 Security Documents.

The payment of principal of, and premium, if any, and interest, if any, on the Securities and all other Notes Obligations, when due, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise and whether by the Company pursuant to the Securities or by any Subsidiary Guarantor pursuant to the Note Guarantees, and the performance of all other obligations of the Company and the Subsidiary Guarantors under the Securities, the Note Guarantees and the Security Documents are secured as provided in the Security Documents.

The Collateral will secure, on an equal and ratable basis as specified in the Collateral Agency and Intercreditor Agreement, the Notes Obligations and the Other Secured Notes Obligations and will be pledged by the Company and the Subsidiary Guarantors to the Collateral Agent for the benefit of the Secured Parties. The Collateral pledged by the Company will secure, on an equal and ratable basis as so specified, the Securities and the other Secured Notes issued under the Other Secured Notes Indenture and the Company's Obligations under the Security

Documents; and the Collateral pledged by any Subsidiary Guarantor will secure, on an equal and ratable basis as so specified, the Note Guarantee of such Subsidiary Guarantor and the guarantee by such Subsidiary Guarantor of the Other Secured Notes issued under the Other Secured Notes Indenture and such Subsidiary Guarantor's Obligations under the Security Documents. Only the Collateral Agent will be entitled to enforce the Liens granted under the Security Documents.

SECTION 11.02 Further Assurances; Opinions; Real Property Collateral Requirements.

(a) The Subsidiary Guarantors will, and the Company will cause each of its Subsidiaries to, do or cause to be done all acts and things which may be required, or which the Collateral Agent from time to time may request, to assure and confirm that the Collateral Agent at all times holds, for the benefit of the holders of Secured Obligations, duly created, enforceable and perfected first priority Liens (subject only to Permitted Collateral Liens) upon the Collateral as contemplated by this Indenture and the Security Documents and to comply with the applicable provisions of the TIA.

(b) The Company shall furnish or cause to be addressed and furnished to the Trustee and (in the case of clauses (1) and (3)) the Collateral Agent:

(1) on the Issue Date, Opinions of Counsel substantially in the form of the Opinions of Counsel delivered on the Issue Date to the Other Secured Notes Trustee relating to (i) any of the Collateral or the Security Documents and (ii) the due authorization, execution and delivery of the Securities, this Indenture, the Note Guarantees and the Security Documents, and the validity and enforceability of such documents; provided that in the case of the preceding clause (ii) no such Opinions of Counsel shall be required on the Issue Date to the extent such matters have been addressed to the reasonable satisfaction of the Trustee and Collateral Agent in the Bankruptcy Order;

(2) at the time of delivery thereof after the Issue Date, Opinions of Counsel substantially in the form of any Opinions of Counsel delivered after the Issue Date to the Collateral Agent relating to any of the Collateral or the Security Documents; and

(3) on or before the Issue Date, the Real Property Collateral Requirements.

(c) At any time and from time to time, the Company will, and will cause each of its Subsidiaries (other than any Excluded Non-Guarantor Subsidiaries) to, promptly execute, acknowledge and deliver such Security Documents, instruments, certificates, notices and other documents and take such other actions as shall be required or which the Collateral Agent may request to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred as contemplated by this Indenture for the benefit of the holders of the Secured Obligations.

(d) The Company and the Subsidiary Guarantors will at all times comply with the provisions of TIA §314(b).

(e) To the extent required, the Company will cause TIA §313(b), relating to reports, and TIA §314(d), relating to the release of property or securities or relating to the substitution therefore of any property or securities to be subjected to the Lien of the Security

Documents, to be complied with. Any certificate or opinion required by TIA §314(d) may be made by an Officer of the Company except in cases where TIA §314(d) requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected by or satisfactory to the Trustee. Notwithstanding anything to the contrary in this paragraph, the Company will not be required to comply with all or any portion of TIA §314(d) if it determines, in good faith based on advice of counsel, that under the terms of TIA §314(d) or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including “no action” letters or exemptive orders, all or any portion of TIA §314(d) is inapplicable to one or a series of released Collateral.

(f) To the extent required, the Company will furnish to the Trustee and the Collateral Agent, prior to each proposed release of Collateral pursuant to the Security Documents:

- (1) all documents required by TIA §314(d); and
- (2) an Opinion of Counsel to the effect that such accompanying documents constitute all documents required by TIA §314(d).

(g) If any Collateral is released in accordance with this Indenture or any Security Document and if the Company has delivered the certificates and documents required by the Security Documents and this Section 11.02, the Trustee will determine whether it has received all documentation required by TIA §314(d) in connection with such release and, based on such determination and the Opinion of Counsel delivered pursuant to this Indenture, will deliver a certificate to the Collateral Agent setting forth such determination.

SECTION 11.03 Collateral Agent.

(a) Wilmington Savings Fund Society, FSB will serve as the Collateral Agent for the benefit of the Holders of the Securities and other Secured Obligations from time to time.

(b) The Collateral Agent is authorized and empowered to appoint one or more co-Collateral Agents or sub-agents or bailees to hold Collateral or to take such other action as it deems necessary or appropriate.

(c) Neither the Trustee nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Collateral Agent’s Lien, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Collateral Agent’s Liens or Security Documents or any delay in doing so.

(d) The Collateral Agent will be subject to such directions as may be given it by the Trustee and by the Other Secured Notes Trustee from time to time as required or permitted by this Indenture and the Collateral Agency and Intercreditor Agreement. The relative rights with respect to control of the Collateral Agent will be specified in the Collateral Agency and Intercreditor Agreement. Except as provided in the Collateral Agency and Intercreditor Agreement and otherwise, except as directed in writing by the Holders of a majority in principal amount of

(x) the Securities and (y) the Other Secured Notes then outstanding, voting together as a single class, the Collateral Agent will not be obligated or permitted:

(1) to act upon directions purported to be delivered to it by any other Person; or

(2) to foreclose upon or otherwise enforce any Lien or other remedy at law or pursuant to any Security Document.

(e) The Collateral Agent is authorized to receive any funds for the benefit of the Holders distributed under the Security Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture and the Security Documents, as the case may be.

(f) The Collateral Agent will be accountable only for amounts that it actually receives as a result of the Collateral Agent's Lien or Security Documents.

(g) In acting as Collateral Agent or co-Collateral Agent, the Collateral Agent and each co-Collateral Agent may rely upon and enforce each and all of the rights, powers, immunities, indemnities and benefits as set forth in the Collateral Agency and Intercreditor Agreement.

(h) The Company will deliver to the Trustee copies of all Security Documents delivered to the Collateral Agent and copies of all documents delivered to the Collateral Agent pursuant to the Security Documents.

(i) The Collateral Agent shall have all the rights and protections provided in the Security Documents.

(j) The Collateral Agent shall have all of the rights, duties, liabilities and immunities specified as those of the Collateral Agent in this Indenture.

SECTION 11.04 Security Documents and Note Guarantees.

(a) Each Holder, by its acceptance of any Securities and Note Guarantees, hereby (i) authorizes the Trustee and the Collateral Agent, as applicable, on behalf of and for the benefit such Holder of Securities, to be the agent for and representative of such Holder with respect to the Note Guarantees, the Collateral and the Security Documents and (ii) irrevocably appoints the Collateral Agent to act as such Holder's agent and Collateral Agent under the Collateral Agency and Intercreditor Agreement.

(b) Each Holder, by its acceptance of any Securities and the Note Guarantees, (i) consents and agrees to the terms of the Security Documents, as the same may be in effect or may be amended from time to time in accordance with their terms; (ii) authorizes and directs each of the Collateral Agent and Trustee to enter into the Security Documents to which it is a party, authorizes and empowers the Trustee and the Collateral Agent to execute and deliver the Collateral Agency and Intercreditor Agreement and authorizes and empowers the Trustee and the Collateral Agent to bind the Holders of Securities and other holders of the Secured Obligations as set forth

in the Security Documents to which they are a party to perform its respective obligations and exercise its respective rights under the Security Documents in accordance therewith; and (iii) irrevocably authorizes the Collateral Agent to perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Collateral Agency and Intercreditor Agreement, together with any other incidental rights, power and discretions.

(c) Anything contained in any of this Indenture or the Security Documents to the contrary notwithstanding, each Holder hereby agrees that no Holder shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies of the Trustee hereunder may be exercised solely by the Trustee in accordance with the terms hereof and all powers, rights and remedies in respect of the Collateral under the Security Documents may be exercised solely by the Collateral Agent.

(d) Subject to the provisions of the Security Documents, the Trustee may, in its sole discretion and without the consent of the Holders, on behalf of the Holders, direct, on behalf of the Holders, the Collateral Agent to take all actions it deems necessary or appropriate in order to (i) enforce any of its rights or any of the rights of the Holders under the Security Documents and (ii) collect and receive any and all amounts payable in respect of the Collateral in respect of the obligations of the Company and the Guarantors hereunder and thereunder. Subject to the provisions of the Security Documents, the Trustee shall have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Security Documents or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interest and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders or the Trustee).

(e) Where Section 4.14 or any other provision of this Indenture or any Security Document requires that additional property or assets be added to the Collateral, the Company shall (x) cause a valid, enforceable, and perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien on or in such property or assets (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and (y) deliver to the Trustee and the Collateral Agent the documents required by Section 4.14 and the following:

- (1) a request from the Company that such Collateral be added;
- (2) [Reserved];
- (3) an Officer's Certificate to the effect that the Collateral being added is in the form, consists of the assets and is in the amount or otherwise has the Fair Market Value required by this Indenture;
- (4) an Officer's Certificate and Opinion of Counsel to the effect that all conditions precedent provided for in this Indenture to the addition of such Collateral have

been complied with, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of the Collateral Agent's Lien on such Collateral and as to the due authorization, execution, delivery, validity and enforceability of the Security Document being entered into; and

(5) such financing statements or other filings or recording instruments, if any, as the Company shall deem necessary to perfect the Collateral Agent's Lien in such Collateral, except, solely in the case of personal property, to the extent such actions are not required pursuant to the applicable Security Document.

(f) Each of the Collateral Agent and the Trustee is authorized and empowered to receive for the benefit of the Holders of Securities any funds collected or distributed to the Collateral Agent or the Trustee under the Security Documents and, subject to the terms of the Security Documents, the Trustee is authorized and empowered to make further distributions of such funds to the Holders of Securities according to the provisions of this Indenture.

(g) Each Holder of Securities, by its acceptance thereof, authorizes and directs the Trustee and the Collateral Agent to enter into one or more amendments to the Collateral Agency and Intercreditor Agreement or enter into any additional intercreditor agreement or any amendments or supplements to the Security Documents in accordance with the provisions of this Indenture, the Collateral Agency and Intercreditor Agreement and the Security Documents.

SECTION 11.05 Release of Collateral Agent's Lien.

Subject to the conditions and provisions of the Security Documents, the Collateral Agent shall cause the Collateral to be released from the Collateral Agent's Lien with respect to the Secured Obligations:

(1) in whole, upon payment in full of the Securities, the Other Secured Notes and all other Secured Obligations that are outstanding, due and payable at the time the Securities and the Other Secured Notes are paid in full;

(2) with respect to the Notes Obligations only, upon satisfaction and discharge of this Indenture as set forth in Section 8.01(a);

(3) with respect to the Notes Obligations only, upon a legal defeasance or covenant defeasance as set forth in Section 8.01(b);

(4) with respect to the Notes Obligations only, upon payment in full of the Securities and all other Notes Obligations that are outstanding, due and payable at the time the Securities are paid in full;

(5) with respect to the Other Secured Notes Obligations only, upon (i) payment in full of the Other Secured Notes and all other Other Secured Notes Obligations that are outstanding, due and payable at the time the Other Secured Notes are paid in full, and in connection therewith, the related indenture is satisfied and discharged or (ii) satisfaction

and discharge of, or a legal defeasance or covenant defeasance under, the Other Secured Notes Indenture, in accordance with the terms thereof;

(6) as to any Collateral that constitutes all or substantially all of the Collateral, (i) with respect to the Notes Obligations only, with the consent of the Holders of at least 66-2/3% in principal amount of the Securities then outstanding or (ii) with respect to the Other Secured Notes Obligations only, with the consent of the Other Secured Noteholders of at least 66-2/3% in principal amount of the Other Secured Notes then outstanding under the Other Secured Notes Indenture (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Securities or the Other Secured Notes);

(7) subject to the provisions of the Collateral Agency and Intercreditor Agreement as to any Collateral which constitutes less than all or substantially all of the Collateral, with the consent of the holders of a majority in principal amount of (x) the Securities and (y) all Other Secured Notes issued under the Other Secured Notes Indenture then outstanding, voting together as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Securities);

(8) as to any Collateral:

(i) that is (or is deemed to be) (A) sold or otherwise disposed of by the Company or any Subsidiary (to a Person other than the Company or any Subsidiary) in a Collateral Disposition permitted by the Other Secured Notes Indenture and this Indenture, at the time of such sale or disposition, to the extent of the interest sold or disposed of in accordance with the terms of this Indenture and so long as all Net Available Cash is deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien) and applied as required by this Indenture or (B) sold or otherwise disposed of by the Company or any Subsidiary (to a Person other than the Company or any Subsidiary) in a transaction that is deemed not to be an Asset Sale pursuant to, and that satisfies all terms and conditions specified in clauses (B), (C), (D), (E), (G), (I), (M), (N), (O), or (P) of the definition of "Asset Sale" and that is otherwise permitted by the Other Secured Notes Indenture and this Indenture, at the time of such sale or disposition, to the extent of the interest sold or disposed of in accordance with the terms of this Indenture,

(ii) constituting Excluded Released Property of the type described in clause (1)(a), (2) or (3) of the definition of Excluded Released Property,

(iii) constituting Capital Stock in any Subsidiary that directly owns solely any Property set forth in Category 8 on Annex I hereto, which

Capital Stock constitutes Property Collateral released upon the delivery of an Officers' Certificate to the Trustee attaching a Board Resolution,

(iv) that becomes Excluded Released Property of the type described in clause (4) of the definition of Excluded Released Property,

(v) that constitutes (A) Asset Sale Excess Proceeds that are not required to be applied to the repurchase of Securities or Other Secured Notes in accordance with Section 4.03 of this Indenture and the Other Secured Notes Indenture, (B) Pending Use Cash, upon the application of such Pending Use Cash for a Permitted Excess Cash Use in accordance with Section 4.03 of this Indenture and the Other Secured Notes Indenture, (C) Pending Use Cash, upon the application of such Pending Use Cash for the repurchase of Securities and Other Secured Notes in accordance with Section 4.03 of this Indenture and the Other Secured Notes Indenture, (D) Pending Redemption Cash, upon the application of such Pending Redemption Cash for the redemption or repurchase, as applicable, of Securities and Other Secured Notes in accordance with Section 4.04 of this Indenture and the Other Secured Notes Indenture, or (E) Issue Date Redemption Cash, upon application of such Issue Date Redemption Cash for redemption of Other Secured Notes in accordance with Section 3.07(c) of the Other Secured Notes Indenture, or

(vi) that is owned or at any time acquired by a Guarantor that has been released from its Note Guarantee and its guarantee of the Other Secured Notes pursuant to Section 10.05 (other than clause (4) thereof), concurrently with the release thereof; or

(9) as to any Collateral (other than any Category 1 Collateral), on the Collateral Release/Covenant Revision Trigger Date.

Subject to the terms of the Security Documents, the Company and the Guarantors will have the right to remain in possession and retain exclusive control of the Collateral securing the Secured Obligations (other than any cash, securities, obligations and Cash Equivalents constituting part of the Collateral that may be deposited with the Collateral Agent in accordance with the provisions of the Security Documents and other than as set forth in the Security Documents), to freely operate or otherwise use the Collateral and to collect, invest and dispose of any income therefrom unless an Actionable Event of Default (as defined in the Collateral Agency and Intercreditor Agreement) has occurred. Upon such an Actionable Event of Default, the Collateral Agent will be entitled to foreclose upon and sell the Collateral or any part thereof as provided in the Security Documents.

The release of any Collateral from the terms hereof and of the Security Documents or the release of, in whole or in part, the Liens created by the Security Documents, will not be deemed to impair the Lien on the Collateral in contravention of the provisions hereof if and to the extent the Collateral or Liens are released pursuant to the applicable Security Documents and pursuant to the terms of this Article 11. The Trustee and each of the Holders acknowledge that a release of Collateral or a Lien strictly in accordance with the terms of the Security Documents and of this

Article 11 will not be deemed for any purpose to be an impairment of the Lien and the Collateral in contravention of the terms of this Indenture.

SECTION 11.06 Collateral Agent to Sign Releases.

The Collateral Agent shall execute any release, quitclaim, termination, supplement or waiver authorized pursuant to and adopted in accordance with this Article 11 and the provisions of any applicable Security Document. The Collateral Agent shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel and an Officer's Certificate, copies of which shall also be provided to the Trustee and the Other Secured Notes Trustee, each stating that the execution of any release, quitclaim, termination, supplement or waiver authorized pursuant to this Article 11 is authorized or permitted by this Indenture and such Security Documents. For the avoidance of doubt, such Opinion of Counsel shall not be an expense of the Trustee or the Collateral Agent.

SECTION 11.07 Relative Rights.

The Security Documents define the relative rights, as lienholders, of holders of Secured Obligations. Nothing in this Indenture or the Security Documents shall:

(a) impair, as between the Company and any Guarantor, on the one hand, and Holders of Securities, on the other hand, the obligation of the Company, which is absolute and unconditional, to pay principal of, and premium and interest on any Security in accordance with its terms or the obligation of any Guarantor under its Note Guarantee or the obligation of the Company or any Guarantor to perform any other obligation of the Company or any Guarantor under this Indenture, the Securities, the Note Guarantees or the Security Documents;

(b) restrict the right of any Holder to sue for payments that are then due and owing, in a matter not inconsistent with the provisions of the Security Documents; or

(c) prevent the Trustee or any Holder from exercising against the Company or any Guarantor any of its other available remedies upon a Default or Event of Default (other than its rights as a secured party, which are subject to the Security Documents).

SECTION 11.08 Junior Lien Intercreditor Agreement.

If a Junior Lien Intercreditor Agreement is entered into, this Article 11 and the provisions of each other Security Document will be subject to the terms, conditions and benefits set forth in the Junior Lien Intercreditor Agreement. The Company and each Guarantor consents to, and agrees to be bound by, the terms of the Junior Lien Intercreditor Agreement, if any, as the same may be in effect from time to time, and to perform its obligations thereunder in accordance with the terms thereof. Each Holder, by its acceptance of the Notes (a) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Junior Lien Intercreditor Agreement and (b) authorizes and instructs the Collateral Agent on behalf of each Holder to enter into the Junior Lien Intercreditor Agreement as ["Priority Lien Representative" (as such term is defined in the Junior Lien Intercreditor Agreement)] on behalf of such Holders as ["Priority Lien Secured Parties" (as such term is defined in the Junior Lien Intercreditor Agreement)]. In addition, each Holder authorizes and instructs the Collateral Agent to enter into any amendments or joinders to the Junior

Lien Intercreditor Agreement in accordance with its terms with the consent of the parties thereto or otherwise in accordance with its terms, without the consent of any Holder or the Trustee, to add additional Indebtedness as Junior Lien Debt and add other parties (or any authorized agent or trustee therefor) holding such Indebtedness thereto and to establish that the Lien on any Collateral securing such additional Indebtedness shall rank junior to the Liens on such Collateral securing the Secured Obligations and rank equally with the Liens on such Collateral securing the Junior Lien Debt then outstanding to the extent permitted by this Indenture and the Security Documents. The Trustee and the Collateral Agent shall be entitled to rely upon an Officer's Certificate or an Opinion of Counsel certifying that any such amendment is authorized or permitted under the Note Documents.

ARTICLE 12
Limited Guarantee

SECTION 12.01 Limited Guarantee Agreement

(a) The REIT by its execution of this Indenture hereby agrees with each Holder of a Security authenticated and delivered by the Trustee, and with the Trustee on behalf of such Holder as set forth in this Article 12:

(b) The REIT, in accordance with the terms hereof, as primary obligor and not merely as a surety, irrespective of the validity and the legal effects of the Securities, irrespective of restrictions of any kind on the performance by each of (i) the New Bank Claim Borrower, (ii) the Company, (iii) the Operating Partnership and (iv) the Subsidiary Guarantors of their respective obligations under the Securities, and waiving all rights of objection and defense arising from the Securities, but subject to the limitations set forth below, hereby guarantees to the Holders (a) the aggregate principal balance of, and all accrued and unpaid interest on, the Securities and (b) all other indebtedness, liabilities, obligations, covenants and duties of the Company owing to the Holders of every kind, nature and description, under or in respect of the Indenture or the Securities or the other Note Documents, for losses solely suffered by reason of fraud or willful misrepresentation by the New Bank Claim Borrower, the Company, the Operating Partnership, the Subsidiary Guarantors and each of their respective affiliates or the REIT (and for no other reason). Any diligence, presentment, demand, protest or notice, whether in relation to the REIT, the Company, or any other person, from a Holder, in respect of any of the REIT's obligations under the Limited Guarantee is hereby waived.

(c) The obligations of the REIT under this Article 12 constitute unsecured and unsubordinated obligations of the REIT and the REIT undertakes that its obligations hereunder will rank equally in right of payment with all other unsecured and unsubordinated obligations of the REIT.

(d) Subject to the limitations set forth above, the Limited Guarantee is a guarantee of payment and not merely of collection and it shall continue in full force and effect by way of continuing security until all principal, premium and interest (including any additional amounts required to be paid in accordance with the terms and conditions of the Securities) have been paid in full and all other actual or contingent obligations of the Company in relation to the Securities or under the Indenture have been satisfied in full. Notwithstanding the foregoing, if any

payment received by any Holder is, on the subsequent bankruptcy or insolvency of the Company or the Subsidiary Guarantors, avoided under any applicable laws, including, among others, laws relating to bankruptcy or insolvency, such payment will not be considered as having discharged or diminished the liability of the REIT and the Limited Guarantee will continue to apply as if such payment had at all times remained owing by the Company.

(e) Until all principal, premium (if any) and interest and all other monies payable by the Company in respect of any Securities shall be paid in full, (i) no right of the REIT, by reason of the performance of any of its obligations under this Article 12, to be indemnified by the Company or to take the benefit of or enforce any security or other guarantee or indemnity against the Company in connection with the Securities shall be exercised or enforced and (ii) the REIT shall not (a) by virtue of this Article 12 or any other reason be subrogated to any rights of any Holder or (b) claim in competition with the Holders against the Company. If the REIT receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Holders by the Company under or in connection with the Securities to be paid in full on behalf and for the benefit of the Holders and shall promptly pay or transfer the same to the Holders as they may direct to the extent such amount shall be due and unpaid by the Company to the Holders.

SECTION 12.02 Release of Limited Guarantee

The REIT's Limited Guarantee shall be released if the Company exercises its legal defeasance option under Section 8.01(b)(1) hereof or its covenant defeasance option under Section 8.01(b)(2) or if the Company's obligations under the Indenture are discharged pursuant to Section 8.01(a) hereof. At the written instruction of the Company, the Trustee shall execute and deliver any documents, instructions or instruments evidencing any such release.

SECTION 12.03 Limitation of Limited Guarantee

Notwithstanding any provision of the Limited Guarantee, any such guarantee by the REIT is hereby limited to the extent, if any, required so that its obligations under such guarantee shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

SECTION 12.04 Limited Guarantee Evidenced by Indenture; No Notation of Limited Guarantee. The Limited Guarantee of the REIT shall be evidenced solely by its execution and delivery of this Indenture and not by an endorsement on, or attachment to, any Security of the Limited Guarantee or notation thereof.

The REIT hereby agrees that the Limited Guarantee set forth in Article 12 hereof shall be and remain in full force and effect notwithstanding any failure to endorse on any Security a notation of the Limited Guarantee.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Limited Guarantee set forth in this Indenture on behalf of the REIT.

ARTICLE 13
Exchange of Securities

SECTION 13.01 Exchange Privilege

(a) Subject to the conditions and upon compliance with the provisions of this Article 13, a Holder shall have the right to surrender for exchange all or any portion (if the portion to be exchanged is \$1.00 principal amount or an integral multiple thereof) of its Securities with the Company at any time until the close of business on the second Scheduled Trading Day immediately prior to the Maturity Date. Upon exchange of Securities, the holder shall be entitled to receive from the Company the amounts and types of consideration due upon exchange specified in Section 13.04 based on the applicable Exchange Rate then in effect and the exchange amount for the Securities being exchanged on the applicable Exchange Date. The Exchange Rate in effect at any time shall be subject to adjustment in the manner set forth herein.

(b) The Securities may not be exchanged after the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date.

SECTION 13.02 Increase of Exchange Rate Upon Exchange in Connection with a Make-Whole Fundamental Change

(a) If a Holder elects to exchange any Securities pursuant to Section 13.03 in connection with a Make-Whole Fundamental Change, then the Company shall increase the Exchange Rate for such Securities so surrendered for exchange by a number of additional shares of Common Stock (the “*Additional Shares*”) under the circumstances and as set forth below. An exchange of Securities shall be deemed for these purposes to be “in connection with” a Make-Whole Fundamental Change if the related Notice of Exchange is received by the Exchange Agent during the period that begins on (and includes) the Effective Date of such Make-Whole Fundamental Change and ends on (and includes) the Business Day immediately prior to the related Fundamental Change Purchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for subclause (1) of the proviso in clause (iv) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change).

(b) The number of Additional Shares, if any, by which the Exchange Rate shall be increased for exchanges in connection with a Make-Whole Fundamental Change shall be determined by reference to the table attached as Schedule A hereto (for purposes of this Section 13.02, the “*table*”), based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “*Effective Date*”) and the Stock Price.

The exact Stock Prices and Effective Dates may not be set forth in the table, in which case:

(i) if the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares by which the Exchange Rate shall be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than \$[] per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (c) below), no Additional Shares shall be added to the Exchange Rate; and

(iii) if the Stock Price is less than \$[] per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (c) below), no Additional Shares shall be added to the Exchange Rate.

Notwithstanding the foregoing, in no event will the Exchange Rate after being so increased exceed [] shares of Common Stock (the “*Maximum Exchange Rate*”) per \$1,000 in exchange amount of Securities being exchanged, subject to adjustment in the same manner as the Exchange Rate is adjusted pursuant to Section 13.06.

(c) The Stock Prices set forth in the first row of the table (*i.e.*, the column headers) and the number of Additional Shares in the table shall be adjusted as of the time at which the Exchange Rate of the Securities is adjusted as set forth in Section 13.06. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Exchange Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Exchange Rate as so adjusted. The numbers of Additional Shares within the table attached as Schedule A hereto shall each be adjusted in the same manner and at the same time as the Exchange Rate is adjusted as set forth in Section 13.06. The Company will likewise make appropriate adjustments to such Stock Prices and numbers of Additional Shares where an Exchange Rate adjustment otherwise required to be made pursuant to the provisions of Section 13.06(a) through (e) is not made in accordance with the provisions of Section 13.06 that permit or require participation by Holders in a Received Dividend or other transaction in lieu of such Exchange Rate adjustment.

(d) The Company shall provide notice in writing of an anticipated Make-Whole Fundamental Change to all Holders of the Securities, the Trustee and the Exchange Agent no later than the 15th Scheduled Trading Day prior to the date on which a Make-Whole Fundamental Change described in clause (iv) of the definition of the term “*Fundamental Change*” is anticipated to become effective and no later than two Business Days after the Company shall learn of the occurrence of a Make-Whole Fundamental Change described in clause (i) of the definition of the term “*Fundamental Change*,” to the extent practicable.

SECTION 13.03 Exercise of Exchange Privilege

(a) Before any Holder of a Security shall be entitled to exchange such Security or any portion thereof having a principal of \$1.00 or an integral multiple thereof, such Holder shall (i) in the case of a Global Security, surrender such Securities for exchange by transferring such Security to the Exchange Agent through the facilities of the Depository and comply with the applicable exchange procedures of the Depository in effect at that time, and furnish appropriate endorsements, and transfer documents if required by the Company or the Exchange Agent, and, if required, pay the funds equal to interest payable on the next Interest Payment Date as set forth in Section 13.04(e), and, if required, pay all taxes or duties, if any, as set forth in Section 13.10 and

(ii) in the case of a Physical Note, (A) complete and manually sign and deliver an irrevocable written notice to the Exchange Agent in the Form of Notice of Exchange set forth in Exhibit D hereto (or a facsimile thereof) (a “*Notice of Exchange*”) at the office of the Exchange Agent and shall state in writing therein the exchange amount of Securities to be exchanged and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the exchange obligation to be registered, (B) surrender such Securities, duly endorsed to the Company or in blank (and, if required, accompanied by appropriate endorsements and transfer documents), at the office of the Exchange Agent, (C) if required, pay all transfer or similar taxes, if any, as set forth in Section 13.10 and (D) if required, pay funds equal to interest payable on the next Interest Payment Date as set forth in Section 13.04(e). The Company shall pay any documentary, stamp or similar issue or transfer tax on the issuance of any shares of Common Stock upon exchange of the Securities, unless the tax is due because the Holder requests such shares or any portion of Securities not exchanged to be issued in a name other than the Holder’s name, in which case the Holder shall pay the tax. The “*Exchange Date*” (in the case of Holder-elected exchange pursuant to Section 13.03) is the first Business Day on which the Holder of a Security has satisfied all of the applicable requirements for exchange of such Security set forth in this Section 13.03(a).

If the Holder of a Security has submitted such Security for purchase upon a Fundamental Change, such Holder may not surrender such Security for exchange until the Holder validly withdraws its Fundamental Change Purchase Notice prior to the Fundamental Change Expiration Time, in accordance with Section 14.02. If a Holder submits its Securities for required repurchase upon a Fundamental Change, the Holder’s right to withdraw the Fundamental Change Purchase Notice and exchange the Securities that are subject to repurchase will terminate at the close of business on the Business Day immediately preceding the relevant Fundamental Change Purchase Date.

If the Holder of a Security has submitted such Security for purchase upon an Asset Sale Excess Proceeds Offer, such Holder may not surrender such Security for exchange until the Holder validly withdraws its election to such Holder’s Security purchased prior to the Asset Sale Excess Proceeds Termination Date, in accordance with Section 4.03. If a Holder submits its Securities for required repurchase upon an Asset Sale Excess Proceeds Offer, the Holder’s right to withdraw the election to such Holder’s Security purchased and exchange the Securities that are subject to repurchase will terminate at the close of business on the Business Day immediately preceding the relevant Asset Sale Excess Proceeds Termination Date.

If the Holder of a Security has submitted such Security for purchase upon a Collateral Release Excess Proceeds Offer, such Holder may not surrender such Security for exchange until the Holder validly withdraws its election to such Holder’s Security purchased prior to the Collateral Release Excess Proceeds Termination Date, in accordance with Section 4.04. If a Holder submits its Securities for required repurchase upon a Collateral Release Excess Proceeds Offer, the Holder’s right to withdraw the election to such Holder’s Security purchased and exchange the Securities that are subject to repurchase will terminate at the close of business on the Business Day immediately preceding the relevant Collateral Release Excess Proceeds Termination Date.

(b) A Holder may exchange fewer than all of such Holder’s Securities so long as the Securities exchanged are a multiple of \$1.00 in principal amount. In case any Definitive

Note shall be surrendered for partial exchange, the Company shall execute and the Trustee shall, upon receipt of an Officer's Certificate, authenticate and deliver to or (subject to Section 13.10) upon the written order of the Holder of the Security so surrendered, without charge to such Holder, a new Definitive Note or Definitive Notes in authorized denominations in an exchange amount equal to the unexchanged portion of the surrendered Definitive Notes.

SECTION 13.04 Settlement of Exchange Obligation

(a) Upon exchange of any Security (whether upon election of a Holder pursuant to Section 13.03 or upon election by the Company pursuant to Section 15.01), the Company will satisfy its exchange obligation by paying or delivering, as the case may be, to exchanging Holders, in respect of the exchange amount of Securities being exchanged, at the Company's option (subject to Section 13.09), either (1) solely cash ("*Cash Settlement*"), (2) shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with Section 13.05 ("*Physical Settlement*") or (3) a combination of cash in a particular Specified Dollar Amount and shares of Common Stock, if any ("*Combination Settlement*"). The Company will have the right to elect the Settlement Method and (if applicable) the Specified Dollar Amount applicable to any exchange of a Security of any Exchange Date; *provided that*

(i) the Company shall always use the same Settlement Method and Specified Dollar Amount, if applicable, for all exchanges occurring on any given Exchange Date and for all exchanges on any Exchange Date on or after the Final Settlement Method Election Date;

(ii) the Company shall initially be deemed to have elected Cash Settlement;

(iii) if the Company elects (subject to Section 13.09) a different Settlement Method and/or to set or reset the Specified Dollar Amount for any Exchange Date, the Company shall deliver a notice (the "*Settlement Notice*") of the relevant Settlement Method and/or Specified Dollar Amount, and the effective date of such Settlement Method and/or Specified Dollar Amount (which shall be no earlier than the Business Day preceding the date on which the Settlement Notice is delivered) to the Holders, the Trustee and the Exchange Agent (if not the Trustee) no later than the close of business on the Business Day immediately after such Exchange Date;

(iv) if the Company elects to use Combination Settlement and fails to specify a Specified Dollar Amount in the Settlement Notice relating to its election of Combination Settlement, the Company shall be deemed to have elected a Specified Dollar Amount equal to \$1,000; and

(v) the Company shall not have the right to change the Settlement Method or the Specified Dollar Amount on or after the Final Settlement Method Election Date.

The amount of cash, if any, and the number of shares of Common Stock, if any, that the Company, is required to pay or deliver, as the case may be, in respect of any exchange of Securities (the “*Settlement Amount*”) shall be computed as follows:

(A) if the Company elects to satisfy the Company’s exchange obligation through Physical Settlement, the Company shall pay or deliver, as the case may be, to the exchanging Holder in respect of the exchange amount of the Securities being exchanged a number of shares of Common Stock equal to the product of (x) the quotient of the (i) aggregate exchange amount of the Securities being exchanged on the Exchange Date divided by (ii) \$1,000 times (y) the Exchange Rate in effect on the Exchange Date (plus cash in lieu of fractional shares as set forth in Section 13.05);

(B) if the Company elects to satisfy the Company’s exchange obligation through Cash Settlement, the Company shall pay to the exchanging Holder, in respect of the exchange amount of the Securities being exchanged, cash in an amount equal to the product of (x) the quotient of the (i) aggregate exchange amount of the Securities being exchanged on the Exchange Date divided by (ii) \$1,000 times (y) the sum of the Daily Exchange Values for each of the 40 consecutive Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its exchange obligation through Combination Settlement, the Company shall deliver to Holders, in respect of the exchange amount of the Securities being exchanged, an amount of cash and shares of Common Stock equal to the product of (x) the quotient of the (i) aggregate exchange amount of the Securities being exchanged on the Exchange Date divided by (ii) \$1,000 times (y) the sum of the Daily Settlement Amounts for each of the 40 consecutive Trading Days during the related Observation Period (plus cash in lieu of fractional shares as set forth in Section 13.05).

Payment or delivery, as the case may be, of the consideration due upon exchange shall be made on the second Business Day after the Exchange Date, unless such Exchange Date occurs on or after the Regular Record Date immediately preceding the Maturity Date, in which case the Company shall make such delivery (and payment, if applicable) on the Maturity Date (such date, the “*Settlement Date*”).

(b) Each exchange shall be deemed to have been effected immediately prior to the close of business on the relevant Exchange Date; *provided, however*, that, in the case of Physical Settlement or Combination Settlement, the Person in whose name any shares of Common Stock shall be issuable upon such exchange shall be treated as the holder of record of such shares as of the close of business on the Exchange Date (in the case of Physical Settlement) or as of the close of business on the last Trading Day of the relevant Observation Period (in the case of Combination Settlement).

(c) Any cash amounts due upon exchange by a Holder of Securities surrendered for exchange shall be paid by the Company (or the Company shall cause such cash amounts to be

paid) to such Holder, or such Holder's nominee or nominees. In addition, the Company shall issue, or shall cause to be issued to such Holder, or such Holder's nominee or nominees, certificates or a book-entry transfer through the Depository for the full number of any shares of Common Stock due upon exchange (together with any cash in lieu of fractional shares).

(d) Upon exchange of an interest in a Global Security, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Security as to the reduction in the principal amount represented thereby. All Definitive Notes delivered for exchange shall be delivered to the Trustee to be cancelled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.10.

(e) Upon exchange, the Company shall not adjust the Exchange Rate to account for accrued and unpaid interest on the Securities, but the Settlement Amount receivable upon exchange will account for accrued and unpaid interest on the Securities being exchanged inasmuch as the exchange amount with respect to such Securities will include as part thereof any accrued and unpaid interest to the Exchange Date. Except as set forth in this subsection (e), the Company's settlement of the exchange of a Security by delivery to the Holder of the Settlement Amount (including any cash payment for fractional shares) pursuant to this Section 13.04 shall be deemed to satisfy its obligation to pay the principal amount of such Security and to pay accrued and unpaid interest, if any, to, but not including, the relevant Exchange Date. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Exchange Date will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

Notwithstanding the foregoing, if a Security is exchanged pursuant to Section 13.01, such that the Exchange Date therefor is after the close of business on a Regular Record Date but prior to the open of business on the immediately following Interest Payment Date, (i) the Holder of such Security at the close of business on such Regular Record Date shall receive the interest payable on such Security on the corresponding Interest Payment Date notwithstanding such exchange; (ii) such Security so surrendered for exchange such that the Exchange Date therefor is during the period after the close of business on any Regular Record Date but prior to the open of business on the immediately following Interest Payment Date must be accompanied by payment of funds equal to the interest that will be payable on such Interest Payment Date on the Security so exchanged; and (iii) notwithstanding the payment of interest on such Security on the corresponding Interest Payment Date pursuant to clause (i) above, as a result of the payment requirements set forth in clause (ii) above, for purposes of clause (ii) the definition of "exchange amount," when used with respect to such Security, such interest shall nonetheless be deemed unpaid; *provided, however*, that no such payment need be made to the extent of any overdue interest, if any overdue interest remains unpaid at the time of exchange with respect to such Security.

SECTION 13.05 Fractions of Shares

The Company shall not issue any fractional share of Common Stock upon exchange of the Securities and shall instead pay cash in lieu of any fractional share of Common Stock otherwise issuable upon exchange equal to the product of (x) such fraction and (y) the Daily VWAP of the shares of Common Stock on the relevant Exchange Date (in the case of Physical Settlement) or on the last Trading Day of the relevant Observation Period (in the case of Combination Settlement). For each Security surrendered for exchange, if the Company has elected to satisfy its exchange

obligation through Combination Settlement, the full number of shares of Common Stock that shall be issued upon exchange thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period and any fractional share remaining after such computation shall be paid in cash. In addition, if more than one Security shall be surrendered for exchange at one time by the same Holder, the number of full shares of Common Stock that shall be issued upon exchange thereof shall be computed on the basis of the aggregate exchange amount of Securities (or specified portions thereof) so surrendered. Neither the Trustee nor the Exchange Agent will have any duty to make any such computation.

SECTION 13.06 Adjustment of Exchange Rate

The Exchange Rate shall be adjusted, without duplication, from time to time by the Company as follows, except that the Exchange Rate shall not be adjusted if Holders of the Securities participate as specified in Section 13.06(q) below in any of the dividends or distributions described in this Section 13.06 (other than (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of shares of Common Stock and solely as a result of holding the Securities, without having to exchange their Securities as if they held a number of shares of Common Stock equal to the product of (i) the applicable Exchange Rate in effect immediately after the close of business on the date for determination of holders of Common Stock entitled to receive such distribution, times (ii) the quotient of the (x) aggregate principal amount of Securities held by such Holders at such time divided by (y) \$1,000 (any such dividend or distribution to the holders of Common Stock in which Holders of Securities participate, a “*Received Dividend*”):

(a) If the REIT issues or otherwise distributes shares of Common Stock as a dividend or distribution to all or substantially all holders of the shares of Common Stock (other than any Received Dividend), or if the REIT effects a share split or share combination of the Common Stock, the Exchange Rate shall be adjusted based on the following formula:

$$ER' = ER^0 \times \frac{OS'}{OS_0}$$

where,

ER⁰ = the Exchange Rate in effect immediately prior to the open of business on the “ex” date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be;

ER' = the new Exchange Rate in effect immediately after the open of business on such “ex” date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as the case may be;

OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on such “ex” date or immediately prior to the open of business

on the effective date of such share split or share combination, as the case may be; and

OS' = the number of shares of Common Stock outstanding immediately after, and solely as a result of, giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 13.06(a) shall become effective immediately after the open of business on the “ex” date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this clause (a) is announced or declared but not so paid or made, the Exchange Rate shall be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Exchange Rate that would then be in effect if such dividend or distribution had not been announced or declared. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Exchange Rate, no adjustment to the Exchange Rate will be made (other than (i) as a result of a reverse share split, share combination or equivalent action thereto or (ii) with respect to the readjustment of the Exchange Rate as described in the immediately preceding sentence).

For purposes of this Section 13.06, “*effective date*” means the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(b) If the REIT distributes to all or substantially all holders of shares of Common Stock any rights or warrants entitling them for a period of not more than 45 days from the record date of such distribution to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the shares of Common Stock on the 10 consecutive Trading Days immediately preceding the date that such distribution was first publicly announced (other than any Received Dividend), the Exchange Rate shall be increased based on the following formula:

$$ER' = ER_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

ER⁰ = the Exchange Rate in effect immediately prior to the open of business on the “ex” date for such distribution;

ER' = the new Exchange Rate in effect immediately after the open of business on the “ex” date for such distribution;

OS⁰ = the number of shares of Common Stock outstanding immediately prior to the open of business on the “ex” date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants, *divided by* the average of the Last Reported Sale Prices of the shares of Common Stock over the 10 consecutive Trading Day period ending on (and including) the Trading Day immediately preceding the date “ex” date for such distribution.

Any increase in the Exchange Rate made under this Section 13.06(b) shall become effective immediately after the open of business on the “ex” date for such distribution.

For purposes of this Section 13.06(b), in determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at a price less than such average of Last Reported Sale Prices of the shares of Common Stock, and in determining the aggregate exercise price payable for such shares of Common Stock, there shall be taken into account any consideration received by the REIT for such rights or warrants and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined by the Board of Directors. To the extent that any such rights or warrants are not exercised or converted prior to the expiration of the exercisability or convertibility thereof, the new Exchange Rate shall be decreased, effective as of the time of such expiration, to the Exchange Rate that would then be in effect if such rights or warrants had not been so distributed. If any such dividend or distribution in this clause (b) is announced or declared but not paid or made, the new Exchange Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Exchange Rate that would then be in effect if such dividend or distribution had not been announced or declared. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Exchange Rate, no adjustment to the Exchange Rate will be made (other than with respect to the readjustment of the Exchange Rate as described in the two immediately preceding sentences).

(c) If the REIT distributes shares of the Company’s Capital Stock, evidences of the REIT’s indebtedness, other assets or property of the REIT or rights or warrants to acquire its Capital Stock or other securities to all or substantially all holders of shares of Common Stock, excluding:

(i) dividends or distributions of shares, or of rights or warrants to purchase or subscribe for shares, of Common Stock as to which the provisions of Section 13.06(a) or Section 13.06(b) shall apply;

(ii) dividends or distributions paid exclusively in cash as to which the provisions of Section 13.06(d) shall apply;

(iii) dividends or distributions of Reference Property pursuant to a Merger Event specified in Section 13.12;

- (iv) any distribution constituting a Received Dividend; and
- (v) Spin-Offs as to which the provisions set forth below in this Section 13.06(c) shall apply

(any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights or warrants, the “Distributed Property”), then the Exchange Rate shall be increased based on the following formula:

$$ER' = ER_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

ER₀ = the Exchange Rate in effect immediately prior to the open of business on the “ex” date for such distribution;

ER' = the new Exchange Rate in effect immediately after the open of business on the “ex” date for such distribution;

SP₀ = the average of the Last Reported Sale Prices of the shares of Common Stock over the 10 consecutive Trading Day period ending on (and including) the Trading Day immediately preceding the “ex” date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding share of Common Stock on the “ex” date for such distribution.

Any increase made under the portion of this Section 13.06(c) set forth above shall become effective immediately after the open of business on the “ex” date for such distribution.

Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Security shall receive, at the same time and upon the same terms as holders of shares of Common Stock and solely as a result of holding such Security, without having to exchange such Security, the amount and kind of Distributed Property that such Holder would have received if such Holder had held a number of shares of Common Stock equal to the product of (i) the Exchange Rate in effect immediately after the close of business on the date for determination of holders of Common Stock entitled to receive such distribution times (ii) the quotient of (x) the aggregate principal amount of such Security divided by (y) \$1,000, and Section 13.06(q) shall apply to such distribution as if such distribution were a Received Dividend. If the Board of Directors determines the “FMV” (as defined above) of any distribution for purposes of this Section 13.06(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the average of Last Reported Sale Prices of the shares of Common Stock over the 10 consecutive Trading Day period ending on (and including) the Trading Day immediately preceding the “ex” date for such distribution. For the avoidance of doubt, if the application of the foregoing formula would result in a

decrease in the Exchange Rate, no adjustment to the Exchange Rate will be made (other than with respect to the readjustment of the Exchange Rate as described in the immediately preceding sentence).

With respect to an adjustment pursuant to this Section 13.06(c) where there has been a payment of a dividend or other distribution on the shares of Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the REIT, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "*Spin-Off*"), the Exchange Rate shall be increased based on the following formula:

$$ER' = ER_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

ER₀ = the Exchange Rate in effect immediately prior to the close of business on the "ex" date of the Spin-Off;

ER' = the new Exchange Rate in effect immediately after the open of business on the "ex" date of the Spin-Off;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of shares of Common Stock applicable to one share of Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to shares of Common Stock were to such Capital Stock or similar equity interest) over the 10 consecutive Trading Day period commencing on (and including) the "ex" date of the Spin-Off (such period, the "*Valuation Period*"); and

MP₀ = the average of the Last Reported Sale Prices of the shares of Common Stock over the Valuation Period.

The increase to the Exchange Rate under the preceding paragraph shall be determined on the last Trading Day of the Valuation Period but shall become effective and be given effect at the open of business on the "ex" date of such Spin-Off; *provided, however*, that (x) in respect of any exchange of Securities for which Physical Settlement is applicable, if the relevant Exchange Date occurs during the Valuation Period, in determining the Exchange Rate, references in the preceding paragraph with respect to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed from (and including) the "ex" date of such Spin-Off to (but excluding) such Exchange Date; and (y) in respect of any exchange of Securities for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such exchange and within the Valuation Period, in determining the Exchange Rate on such Trading Day, references in the preceding paragraph with respect to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed from (and including) the "ex" date of such Spin-

Off to (but excluding) such Trading Day. If the “ex” date of the Spin-Off is less than 10 Trading Days prior to (and including) the end of the Observation Period with respect to any exchange, references in the preceding paragraph to 10 consecutive Trading Days will be deemed to be replaced, solely with respect to that exchange, with such lesser number of Trading Days as have elapsed from and including the “ex” date for the Spin-Off to (and including) the last Trading Day of such Observation Period.

If any such distribution described in this Section 13.06(c) is declared or announced but not paid or made, the new Exchange Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such distribution, to be the Exchange Rate that would then be in effect if such distribution had not been declared or announced. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Exchange Rate, no adjustment to the Exchange Rate will be made (other than with respect to the readjustment of the Exchange Rate as described in the immediately preceding sentence).

For purposes of this Section 13.06(c) (and subject in all respects to Section 13.06(i)), rights or warrants distributed by the REIT to all holders of shares of Common Stock entitling them to subscribe for or purchase shares of the REIT’s Capital Stock, including Common Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of specified event or events (“*Trigger Event*”): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 13.06(c) (and no adjustment to the Exchange Rate under this Section 13.06(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exchange Rate shall be made under this Section 13.06(c). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and “ex” date with respect to new rights or warrants with such rights (in which case the existing rights or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other such event (of the type described in the immediately preceding sentence) with respect thereto that was deemed to effect a distribution of rights or warrants, in each case for which an adjustment to the Exchange Rate under this Section 13.06(c) was made, (1) in the case of any such rights or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Exchange Rate shall be readjusted as if such rights or warrants had not been issued and (y) the Exchange Rate shall then again be readjusted, effective as of the date of such final redemption or purchase, to give effect to such distribution, deemed distribution or Trigger Event or other such event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of shares of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders

of shares of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Exchange Rate shall be readjusted, effective as of such expiration or termination date, as if such rights and warrants had not been issued.

For purposes of Section 13.06(a), Section 13.06(b), Section 13.06(d) and this Section 13.06(c), if any dividend or distribution to which this Section 13.06(c) or Section 13.06(d) is applicable (other than a Spin-Off) has the same “ex” date as one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 13.06(a) is applicable (the “*Clause A Distribution*”); or

(B) a dividend or distribution of rights or warrants to which Section 13.06(b) is applicable (the “*Clause B Distribution*”),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 13.06(c) or Section 13.06(d), as the case may be, is applicable (the “*Clause C or D Distribution*”) and any Exchange Rate adjustment required by this Section 13.06(c) or Section 13.06(d), as the case may be, with respect to such Clause C or D Distribution shall first be made, and (2) the “ex” date for the Clause B Distribution, if any, shall be deemed to immediately follow the “ex” date for the Clause C or D Distribution and any Exchange Rate adjustment required by Section 13.06(b) with respect to the Clause B Distribution shall then be made immediately after the adjustment pursuant to clause (1), except that, if determined by the Company, any shares of Common Stock that become outstanding as a result of the Clause A Distribution or the Clause B Distribution shall not be deemed to be “outstanding immediately prior to the open of business on the “ex” date” within the meaning of Section 13.06(b), and (3) the “ex” date for the Clause A Distribution, if any, shall be deemed to immediately follow the “ex” date for the Clause C or D Distribution or the Clause B Distribution, as the case may be, and any Exchange Rate adjustment required by Section 13.06(a) with respect to the Clause A Distribution shall then be made immediately after the adjustments pursuant to clauses (1) and (2), except that, if determined by the Company, any shares of Common Stock that become outstanding as a result of the Clause A Distribution shall not be deemed to be “outstanding immediately prior to the open of business on such “ex” date” within the meaning of Section 13.06(a).

(d) If (x) the REIT distributes any cash dividend or distribution to all or substantially all holders of shares of Common Stock (other than (i) any distribution of Reference Property pursuant to a Merger Event specified in Section 13.12 and (ii) any Received Dividend) and (y) the amount distributed per share of Common Stock in such dividend or distribution exceeds

the Dividend Available Threshold Amount with respect to such dividend or distribution, the Exchange Rate shall be adjusted based on the following formula:

$$ER' = ER_0 \times \frac{SP_0 - DATA}{SP_0 - C}$$

where,

ER₀ = the Exchange Rate in effect immediately prior to the open of business on the “ex” date for such dividend or distribution;

ER' = the new Exchange Rate in effect immediately after the open of business on the “ex” date for such dividend or distribution;

SP₀ = the average of the Last Reported Sale Prices of the shares of Common Stock over the 10 consecutive Trading Day period ending on (and including) the Trading Day immediately preceding the “ex” date for such dividend or distribution;

DATA = the Dividend Available Threshold Amount with respect to such dividend or distribution; and

C = the amount of such cash dividend or distribution the Company distributes to one share of Common Stock.

The Dividend Threshold Amount is subject to adjustment on an inversely proportional basis whenever the Exchange Rate is adjusted pursuant to this Section 13.06. Any increase in the Exchange Rate made under this Section 13.06(d) shall become effective immediately after the open of business on the “ex” date for such dividend or distribution. If any dividend or distribution described in this Section 13.06(d) is announced or declared but not so paid or made, the new Exchange Rate shall be readjusted, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Exchange Rate that would then be in effect if such dividend or distribution had not been announced or declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Security shall receive, at the same time and upon the same terms as holders of shares of Common Stock and solely as a result of holding Securities, without having to exchange such Security, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the product of (i) the Exchange Rate in effect on the “ex” date for such cash dividend or distribution times (ii) the quotient of (x) the aggregate principal amount of such Security divided by (y) \$1,000, and Section 13.06(q) shall apply to such dividend or distribution as if such dividend or distribution were a Received Dividend. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Exchange Rate, no adjustment to the Exchange Rate will be made (other than with respect to the readjustment of the Exchange Rate as described in the immediately preceding sentence).

(e) If the REIT or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for shares of Common Stock (other than an odd-lot tender offer), to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the shares of Common Stock over the 10 consecutive Trading Days commencing on (and including) the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Exchange Rate shall be increased based on the following formula:

$$ER' = ER_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

- ER₀ = the Exchange Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- ER' = the new Exchange Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of any shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OS' = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange pursuant to such tender or exchange offer); and
- SP' = the average of the Last Reported Sale Prices of the shares of Common Stock over the 10 consecutive Trading Day period commencing on (and including) the Trading Day next succeeding the date such tender or exchange offer expires.

The increase in the Exchange Rate under this Section 13.06(e) shall be determined on the last Trading Day of such 10 Trading Day period but shall become effective and be given effect at the close of business on the 10th Trading Day immediately following (and including) the Trading Day next succeeding the date such tender or exchange offer expires; *provided, however*, that (x) in respect of any exchange of Securities for which Physical Settlement is applicable, if the relevant Exchange Date occurs within such 10 Trading Day period, in determining the Exchange Rate, references in the preceding paragraph with respect to 10 consecutive Trading Days shall be deemed replaced with such lesser number

of consecutive Trading Days as have elapsed from (and including) the Trading Day next succeeding the expiration date of such tender or exchange offer to (but excluding) such Exchange Date; and (y) in respect of any exchange of Securities for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such exchange and within such 10 Trading Day period, in determining the Exchange Rate as of such Trading Day, references in the preceding paragraph with respect to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed from (and including) the Trading Day next succeeding the expiration date of such tender or exchange offer to (but excluding) such Trading Day. If the Trading Day next succeeding such expiration date is less than 10 Trading Days prior to (and including) the end of the Observation Period with respect to any exchange, references in the preceding paragraph to 10 consecutive Trading Days shall be deemed to be replaced, solely with respect to that exchange, with such lesser number of Trading Days as have elapsed from (and including) the Trading Day next succeeding the expiration date to (and including) the last Trading Day of such Observation Period.

If the REIT or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer but the REIT or Subsidiary is ultimately prevented by applicable law from effecting all or any portion of such purchases or all such purchases are rescinded, the new Exchange Rate shall be decreased, effective as of the date the Board of Directors determines that applicable law so prevents, or rescinds, such purchases, to the Exchange Rate that would be in effect if such tender or exchange offer had not been made or had been made only in respect of such purchases that had been effected. For the avoidance of doubt, if the application of the formula in the preceding paragraph would result in a decrease in the Exchange Rate, no adjustment to the Exchange Rate will be made (other than with respect to the readjustment of the Exchange Rate as described in the immediately preceding sentence).

(f) If:

(i) the Company elects (or is deemed to have elected) to satisfy its exchange obligation through Combination Settlement and shares of Common Stock are deliverable to settle the Daily Settlement Amount for a given Trading Day within the Observation Period applicable to Securities that a Holder has exchanged,

(ii) any distribution or transaction that requires an adjustment to the Exchange Rate pursuant to (a), (b), (c), (d) and (e) of this Section 13.06 has not yet resulted in an adjustment to the Exchange Rate on the Trading Day in question, and

(iii) such Holder will not be entitled to participate in the relevant distribution or transaction as a holder of the shares such Holder will receive in respect of such Trading Day (because such Holder will not be a holder of record of such shares on the related record date),

then the Company shall adjust the number of shares that the Company will deliver to such Holder in respect of the relevant Trading Day as the Company reasonably determines to be appropriate to

reflect the relevant distribution or transaction, without duplication of any adjustment made pursuant to the provisions set forth under Section 13.07.

If:

(x) the Company elects (or is deemed to have elected) Physical Settlement to satisfy the Company's exchange obligation to a Holder (other than cash in lieu of any fractional share),

(y) any distribution or transaction that requires an Exchange Rate adjustment pursuant to subsection (a), (b), (c), (d) or (e) of this Section 13.06 has not yet resulted in an adjustment to the Exchange Rate on a given Exchange Date, and

(z) such Holder will not be entitled to participate in the relevant distribution or transaction as a holder of the shares such Holder will receive on settlement of the related exchange (because such Holder will not be a holder of record of such shares on the related record date),

then the Company shall adjust the number of shares that the Company will deliver to such Holder in respect of such exchange of Securities in a manner the Company reasonably determines to be appropriate to reflect the relevant distribution or transaction without duplication of any adjustment made pursuant to the provision set forth under Section 13.07.

(g) Notwithstanding this Section 13.06 or any other provision of the Indenture or the Securities, if an Exchange Rate adjustment becomes effective on any "ex" date as specified in Section 13.06(a) through (e), and either (i) a Holder has converted its Security for Physical Settlement on an Exchange Date that is on or after such "ex" date and on or prior to the related record date and such Holder would be treated as the record holder of shares of Common Stock as of the related Exchange Date pursuant to Section 13.04(b) based on an adjusted Exchange Rate otherwise becoming effective on such "ex" date or (ii) a Holder has exchanged a Security for Combination Settlement with the last Trading Day of the related Observation Period ending on or after such "ex" date and on or prior to the related record date and such Holder would be treated as the record holder of shares of Common Stock as of the last Trading Day of such Observation Period pursuant to Section 13.04(b) based on an adjusted Exchange Rate for such "ex" date, then, in the case of (i) or (ii), notwithstanding the foregoing Exchange Rate adjustment provisions, the Exchange Rate adjustment otherwise becoming effective on such "ex" date shall not be made for such exchanging Holder; and, instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock such Holder is entitled to receive upon exchange on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(h) Except as stated in this Indenture, the Company will not adjust the Exchange Rate for the issuance or acquisition of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities. The applicable Exchange Rate will not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest

payable on the REIT's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or restricted stock units or rights (including shareholder appreciation rights) to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the REIT or any of its Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any right or warrant or exercisable, exchangeable or convertible security not described in this Section 13.06(h) and outstanding as of the Issue Date;

(iv) upon the repurchase of any shares of Common Stock pursuant to an odd lot tender offer or an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described in Section 13.06(e);

(v) for a change solely in the par value of the shares of Common Stock; or

(vi) for accrued and unpaid interest, if any.

(i) If the REIT adopts a shareholder rights plan, then upon exchange of the Securities, in addition to the shares of Common Stock, if any, Holders will receive from the Company a corresponding amount of rights consistent with the rights distributed by the REIT to other holders of Common Stock under such rights plan, unless prior to any exchange, the shareholder rights plan expires or terminates or the rights have separated from the shares of Common Stock in accordance with such rights plan, in which case, and only in such case, the Exchange Rate will be adjusted at the time of separation as if the REIT distributed, to all holders of shares of Common Stock, Distributed Property consisting of such rights as described in Section 13.06(c), subject to readjustment in the event of the expiration, termination or redemption of such rights. A distribution of rights pursuant to a shareholder rights plan will not otherwise trigger an Exchange Rate adjustment pursuant to Section 13.06(b) or (c).

(j) In addition to those adjustments required by subsections (a), (b), (c), (d) and (e) of this Section 13.06, and to the extent permitted by applicable law and applicable listing rules of any U.S. national securities exchange on which the shares of Common Stock are then listed, (i) the Company in its sole discretion from time to time may increase the Exchange Rate by any amount for a period of at least 20 Business Days and (ii) the Company may also (but is not required to) increase the Exchange Rate to avoid or diminish any income tax to holders of shares of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Exchange Rate is increased pursuant to either of the preceding two sentences, the Company shall deliver to the Holder of each Security at its last address appearing on the Security Register a notice of the increase at least 15 days prior to the date the increased Exchange Rate takes effect, and such notice shall state the increased Exchange Rate and the period during which it will be in effect.

(k) Adjustments to the Exchange Rate shall be calculated to the nearest one-ten thousandth (1/10,000) of a share.

(l) For purposes of this Section 13.06, (i) the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the REIT so long as the REIT does not make or issue any dividend or distribution on shares of Common Stock held in the treasury of the REIT but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) the dividend or distribution of any issued shares of Common Stock owned or held by or for the account of the REIT shall be deemed a dividend or distribution of shares of Common Stock.

(m) [Reserved]

(n) Irrespective of any adjustment in the Exchange Rate applicable or the amount or kind of shares into which the Securities are exchanged, the Securities theretofore or thereafter issued may continue to express the same Exchange Rate initially applicable or amount or kind of shares initially issuable upon exchange of the Securities pursuant to this Indenture.

(o) [Reserved]

(p) Prior to the date for determination of holders of shares of Common Stock entitled to receive a distribution constituting a Received Dividend, the Company shall deliver a written notice to the Trustee that the Company intends to treat such distribution as a "Received Dividend" hereunder. If the Company shall have given such a notice to the Trustee of its intention to treat a distribution as a Received Dividend, the Company and the REIT shall not permit any tender or exchange offer to which Section 13.06(e) applies to expire on, or on any day within the period of 10 Trading Days ending on (and including) the Trading Day next preceding, such date for determination.

(q) At the same time the REIT makes a distribution constituting a Received Dividend to holders of Common Stock, the Company shall distribute, to each Person who was the Holder of a Security that was outstanding immediately after the close of business on the date for determination of holders of shares of Common Stock entitled to receive such distribution (whether or not such Security is outstanding on the date of such distribution), an amount equal to the amount of securities, cash or other assets that would have been receivable upon such distribution by a holder of the number of shares of Common Stock equal to the product of (i) the Exchange Rate in effect at such time times (ii) the quotient of (x) the aggregate principal amount of such Security divided by (y) \$1,000.

SECTION 13.07 Adjustments of Prices

Whenever any provision of this Indenture requires the Company to calculate (i) the Last Reported Sale Prices, the Daily VWAPs or the Daily Exchange Values over a span of multiple days (including an Observation Period, a Valuation Period and the period for determining the Stock Price for purposes of a Make-Whole Fundamental Change) or (ii) the Dividend Available Threshold Amount by reference to the respective amounts distributed per share of Common Stock in dividends having multiple "ex" dates in a fiscal quarter, the Company shall make any adjustments to each that it reasonably determines to be appropriate to account for any adjustment

to the Exchange Rate that becomes effective, or any event requiring an adjustment to the Exchange Rate (or changes to the market price per share of Common Stock resulting from any such event) where the “ex” date, Effective Date or expiration date, as the case may be, of the event occurs at any time during the period when such Last Reported Sale Prices, Daily VWAPs or Daily Exchange Values are to be calculated (in the case of clause (i) above) or during the fiscal quarter with respect to which the Dividend Available Threshold Amount is to be calculated by reference to such multiple per share amounts (in the case of clause (ii) above), without duplication of any adjustment made pursuant to Section 13.06. The Company will likewise make appropriate adjustments where an Exchange Rate adjustment otherwise required to be made pursuant to the provisions of Section 13.06(a) through (e) is not made in accordance with the provisions of Section 13.06 that permit or require participation by Holders in a distribution in lieu of such Exchange Rate adjustment. The Company shall deliver an Officers’ Certificate to the Trustee and any Exchange Agent setting forth any such adjustment referred to in this Section 13.07 and an explanation of the basis thereof. Neither the Trustee nor the Exchange Agent shall have any responsibility for any of the foregoing calculations or determinations.

SECTION 13.08 Notice of Adjustments of Exchange Rate

Whenever the Exchange Rate is adjusted as herein provided, the Company shall compute the adjusted Exchange Rate in accordance herewith and shall prepare a certificate signed by the Chief Financial Officer or principal accounting officer of the Company setting forth the adjusted Exchange Rate and describing in reasonable detail the facts upon which such adjustment is based. Such certificate shall promptly be filed with the Trustee and with the Exchange Agent (if other than the Trustee), and the Company shall also notify the Holders through the Trustee and the Exchange Agent (if other than the Trustee) of the adjustment. Failure to deliver any such certificate or notice shall not affect the validity of such adjustment.

SECTION 13.09 Certain Covenants

The Company shall not elect to satisfy its obligation to exchange the Securities (whether pursuant to a Holder-elected exchange under Section 13.03 or a Company Optional Exchange under Section 15.01) by any Settlement Method other than Cash Settlement, unless on the relevant Exchange Date for such exchange:

(a) The REIT has authorized for issuance and available, out of its authorized but unissued shares of Common Stock or shares of Common Stock held in treasury that are not committed for any other purpose, free from preemptive rights, a number of shares of Common Stock equal to the number of shares of Common Stock required to settle all exchanges occurring on the applicable Exchange Date.

(b) All shares of Common Stock to be issued and delivered upon exchange of Securities have been duly authorized and validly issued and are fully paid and non-assessable, free of restrictions on transfer and free from all taxes, liens and charges with respect to the issue thereof (other than taxes payable by the Holder in respect of any issuance in a different name as specified in Section 13.10).

(c) The Exchange Price is an amount equal to or in excess of the then par value, if any, of the shares of Common Stock to be issued upon exchange of the Securities upon exchange of the Securities.

(d) If any shares of Common Stock to be issued or delivered upon exchange of Securities hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued or delivered upon exchange, the REIT has secured such registration or obtained such approval, as the case may be.

(e) Following the Initial Listing Date, if on the relevant Exchange Date the Common Stock is listed on any U.S. national securities exchange or automated quotation system, the Common Stock to be issued upon exchange of the Securities is listed on such exchange or automated quotation system.

SECTION 13.10 Taxes on Exchanges

The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issuance of shares of Common Stock upon any exchange of Securities hereunder; *provided*, that the Company shall not be required to pay any tax that is due because the exchanging Holder requests such shares or any portion of Securities not exchanged to be issued in a name other than such Holder's name, in which case the Holder shall pay that tax and the Exchange Agent shall not deliver the certificates representing or effect a book-entry transfer through the Depository for the shares of Common Stock being issued or such unexchanged Securities in a name other than the Holder's name until the Trustee receives the amount of any such tax or duty or the Holder has established to the satisfaction of the Company that such tax or duty has been paid.

SECTION 13.11 Notice to Holders Prior to Certain Actions

In case of any:

- (a) action by the Company, the REIT or one of their Subsidiaries that would require an adjustment to the Exchange Rate under Section 13.06;
- (b) Merger Event; or
- (c) voluntary or involuntary dissolution, liquidation or winding-up of the REIT, the Company or any of their Subsidiaries,

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture excluding, for the avoidance of doubt, Section 13.08), the Company shall cause to be filed with the Trustee and the Exchange Agent and to be sent to each Holder at such Holder's address appearing on the Security Register, as promptly as practicable but in any event at least five calendar days prior to the applicable date specified in clause (x) or (y) below (or, if the date on which the Company first knows of the applicable date specified in clause (x) or (y) below is later than such applicable date, no more than two Business Days after such date on which the Company first has such knowledge), or, in any such case, prior to such earlier time as notice thereof shall be required to be given pursuant to Rule 10b-17 under the Exchange Act, a notice stating (x) the date

as of which the holders of record of shares of Common Stock are to be determined for the purpose of such action by the REIT or one of its Subsidiaries or, in the case of a share split or share combination, the effective date of such share split or share combination or, in the case of a tender or exchange offer, the date on which such tender offer or exchange offer commences, or (y) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and, if applicable, the date as of which it is expected that holders of record of shares of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such event or the operation of any provision herein consequent on or relating to such event.

If at any time the Company or the REIT shall cancel any of the proposed transactions for which notice has been given under this Section 13.11 prior to the consummation hereof, the Company shall cause to be filed with the Trustee and the Exchange Agent and to be sent to each Holder at such Holder's address appearing on the Security Register, as promptly as practicable, notice of such cancellation.

SECTION 13.12 Provision in Case of Merger Event

- (a) In the event of:
- (i) any recapitalization, reclassification or change of the shares of Common Stock (other than as a result of a stock split or reverse stock split or subdivision or combination involving solely Common Stock);
 - (ii) any consolidation, merger or combination involving the REIT;
 - (iii) any sale, lease or other transfer of the assets of the REIT substantially as an entirety; or
 - (iv) any statutory share exchange,

in each case, as a result of which the shares of Common Stock are converted into, or exchanged for, stock, other securities, other property or assets (including cash) or any combination thereof (any such event, a "*Merger Event*"), then at the effective time of such Merger Event, the right to exchange each \$1,000 exchange amount of Securities being exchanged based on a number of shares of Common Stock equal to the Exchange Rate will be changed into a right to exchange such exchange amount based on the kind and amount of shares of stock, other securities or other property or assets (including cash) or any combination thereof that a holder of a number of shares of Common Stock equal to the Exchange Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "*Reference Property*," with each "*unit of Reference Property*" meaning the kind and amount of Reference Property that a holder of one share of Common Stock would have owned or been entitled to receive) upon such Merger Event; and at or prior to the effective time of such Merger Event, the Company, the REIT (or other Person that become the "REIT" pursuant to Section 5.02 as a result of such Merger Event) and any other issuer of securities constituting Reference Property, shall execute and deliver to the Trustee a supplemental indenture in accordance with Section 9.01 providing for such change in the right to exchange each \$1,000 exchange amount of Securities;

provided, however, that, at and after the effective time of such Merger Event:

(A) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon exchange of Securities, in accordance with Section 13.04 hereof; and

(B) (i) any amount payable in cash upon exchange of the Securities as set forth under Section 13.04 hereof will continue to be payable in cash, (ii) any shares of Common Stock that the Company would have been required to deliver upon exchange of the Securities as set forth under Section 13.04 hereof will instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have owned or been entitled to receive in such Merger Event and (iii) the Daily VWAP will be calculated based on the value of a unit of Reference Property that a holder of one share of Common Stock would have owned or been entitled to receive in such Merger Event.

If the Merger Event causes a holder of Common Stock to own or receive more than a single type of consideration (determined based in part upon any form of shareholder election), then:

(1) the amount and type of Reference Property that a holder of shares of Common Stock would have owned or been entitled to receive in such Merger Event (and for which the Securities will be exchangeable) will be deemed to be the weighted average of the types and amounts of consideration actually owned or received by the holders of shares of Common Stock;

(2) the unit of Reference Property shall refer to the consideration referred to in clause (1) attributable to one share of Common Stock; and

(3) the Company shall adjust the Dividend Threshold Amount based on the relative values of the common stock or similar common equity interests and (if applicable) any non-stock consideration comprising the Reference Property.

The Company shall notify, in writing, the Holders, the Trustee and the Exchange Agent (if other than the Trustee) of the types and amounts of consideration comprising a unit of Reference Property and of any adjustment to the Dividend Threshold Amount as soon as practicable after such determination is made.

If the holders of shares of Common Stock own or receive only cash in such Merger Event, then for all exchanges for which the Exchange Date occurs after the effective date of such Merger Event:

(A) the consideration due upon exchange of Securities shall be solely cash in an amount equal to the product of (i) the quotient of (x) the exchange amount of the Securities being exchanged on the Exchange Date divided by (y) \$1,000 times (ii) the Exchange Rate in effect on the Exchange Date (as may be increased by any Additional Shares pursuant to Section 13.02), times (iii) the price paid per share of Common Stock in such Merger Event; and

(B) the Company shall satisfy the Company's exchange obligation by paying cash to converting Holders on the second Business Day immediately following the Exchange Date.

The Company shall not become a party to any Merger Event unless the terms thereof are consistent with this Section 13.12. Such supplemental indenture described in the first paragraph of this Section 13.12 (a) shall provide for anti-dilution and other adjustments, and covenants for protection of the interests of the Holders of Securities, in respect of the Reference Property that the Board of Directors shall determine to be as nearly equivalent as is practicable to the adjustments and covenants provided for in this Article 13 in respect of Common Stock.

(b) When the Company executes and delivers a supplemental indenture pursuant to Section 13.12(a), the Company shall promptly (i) deliver to the Trustee an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or assets that will comprise a unit of Reference Property after any such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent in this Indenture to such execution and delivery have been complied with, and (ii) mail notice thereof to each Holder at its last address appearing on the Security Register. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at its address appearing on the Security Register provided for in this Indenture, within 60 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) Neither the Company nor the REIT shall become a party to any Merger Event unless its terms are consistent with this Section 13.12. None of the foregoing provisions shall affect the right of a holder of Securities to exchange its Securities into cash or shares of Common Stock, as applicable, as set forth in Section 13.04(a) prior to the effective time of such Merger Event.

(d) The above provisions of this Section 13.12 shall similarly apply to successive Merger Events.

(e) Notwithstanding the Exchange Rate adjustment provisions described in Section 13.06(a) through (e), no adjustment to the Exchange Rate shall be made pursuant to such provisions in the event of any dividend, distribution, share split, share combination or issuance upon a Merger Event to which the provisions under this Section 13.12 apply.

SECTION 13.13 No Voting or Dividend Rights

Except as may be specifically provided for herein, until the exchange record date in respect of the exchange of such Security:

(a) no Holder of such Security shall have or exercise any rights by virtue hereof as a holder of shares of Common Stock, including, without limitation, the right to vote, to receive dividends and other distributions as a holder of shares of Common Stock or to receive notice of, or attend, meetings or any other proceedings of the holders of shares of Common Stock;

(b) the consent of any such Holder as a holder of shares of Common Stock shall not be required with respect to any action or proceeding of the REIT;

(c) no such Holder, by reason of the ownership or possession of such Security, shall have any right to receive any cash dividends, stock dividends, allotments or rights or other distributions paid, allotted or distributed or distributable to the holders of shares of Common Stock prior to, or for which the relevant record date preceded, the exchange record date in respect of the exchange of such Security; and

(d) no such Holder shall have any right not expressly conferred hereunder or by applicable law with respect to such Security held by such Holder.

For purposes of this Section 13.13, “*exchange record date*” means, in respect of the exchange of any Security, the date specified in Section 13.04(b) upon which the Person in whose name shares of Common Stock are issuable upon exchange of such Security shall be treated as the holder of record of such shares of Common Stock upon the exchange of such Security.

SECTION 13.14 No Responsibility of Trustee for Exchange Provisions

(a) The Trustee and any other Exchange Agent shall not at any time be under any duty or responsibility to determine, or be accountable for any failure of the Company to determine, or be deemed to make any representation as to,

(i) the Exchange Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Exchange Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same;

(ii) the validity or value (or the type or amount) of any shares of Common Stock or cash or, after a Merger Event, Reference Property that may at any time be issued or delivered upon the exchange of any Security;

(iii) the correctness of any provisions contained in any supplemental indenture entered into pursuant to the first paragraph of Section 13.12(a) relating either to the type or amount of Reference Property receivable by Holders upon the exchange of their Securities after any Merger Event or to any adjustment to be made with respect thereto;

(iv) whether any event contemplated by Section 13.01(b) has occurred that makes the Securities eligible for exchange or no longer eligible therefor until the Company has sent to the Trustee and any other Exchange Agent a notice referred to in Section 13.01(b) with respect to the commencement or termination of such exchange rights, on any which notices the Trustee and any other Exchange Agent may conclusively rely; or

(v) the applicable Daily VWAP or Last Reported Sale Price or any Settlement Amount.

(b) Neither the Trustee nor any other Exchange Agent shall at any time be under any duty or responsibility to cause the REIT to, or be accountable for any failure of the REIT to, issue, transfer or deliver any shares of Common Stock or cash or, after a Merger Event, Reference Property upon the surrender of any Security for the purpose of exchange or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 13.

ARTICLE 14
Repurchase of Securities at Option of Holders

SECTION 14.01 *Intentionally Omitted*

SECTION 14.02 Repurchase at Option of Holders Upon a Fundamental Change

(a) If a Fundamental Change occurs at any time, then each Holder shall have the right, at such Holder's option, to require the Company to purchase for cash any or all of such Holder's Securities or any portion thereof that is equal to \$1.00 or a multiple of \$1.00 principal amount, on the date the ("*Fundamental Change Purchase Date*") specified by the Company that is not less than 20 calendar days and not more than 35 calendar days following the date on which the Company gives the Fundamental Change Purchase Right Notice (as defined below) at a purchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, thereon, if any, to, but excluding, the Fundamental Change Purchase Date (the "*Fundamental Change Purchase Price*"); provided, however, that if Securities are purchased pursuant to this Section 14.02 on a Fundamental Change Purchase Date that falls after the close of business on a Regular Record Date but on or prior to the close of business on the related Interest Payment Date, the interest payable in respect of such Interest Payment Date shall be payable to the Holders of record on such Regular Record Date, in which case, the Fundamental Change Purchase Price shall be equal to 100% of the principal amount of the Securities being purchased.

(b) Holders may exercise the right to require the Company to purchase (and the Company shall be required thereupon to purchase) Securities under this Section 14.02, at the option of the Holder thereof, upon:

(i) delivery to the Trustee (or other Paying Agent appointed by the Company) by a Holder of a duly completed notice (the "*Fundamental Change Purchase Notice*") in the form set forth on the reverse of the Security during the period between the delivery of the Fundamental Change Purchase Right Notice and the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date (the "*Fundamental Change Expiration Time*"); and

(ii) (A) if Definitive Securities, delivery of such Securities to the Trustee (or other Paying Agent appointed by the Company) (together with all necessary endorsements, if the Securities are Definitive Securities) at the Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Company) or (B) if Global Securities, book-entry transfer of such Securities to the Trustee (or other Paying Agent appointed by the Company), in each case, at any time during period between the delivery of the Fundamental Change Purchase Notice and the Fundamental Change Expiration Time, such delivery or book-entry transfer being

a condition to receipt by the Holder of the Fundamental Change Purchase Price therefor.

(c) The Fundamental Change Purchase Notice be in the form of Attachment 2 hereto and shall state:

(A) if Definitive Securities, the certificate numbers of Securities to be delivered for purchase;

(B) the portion of the principal amount of Securities to be purchased, which must be \$1.00 or an integral multiple thereof; and

(C) that the Securities are to be purchased by the Company pursuant to the applicable provisions of the Securities and the Indenture;

provided, however, that if the Securities are Global Securities, the Fundamental Change Purchase Notice must comply with the Applicable Procedures.

The Company shall be required to purchase on the Fundamental Change Purchase Date, pursuant to this Article 14, any Securities as to which a Fundamental Change Purchase Notice has been delivered and not withdrawn (and the other requirements specified in Section 14.02(b) for exercise of the Holder's right to require purchase of such Securities shall be satisfied) prior to the Fundamental Change Expiration Time.

Securities to be purchased pursuant to this Section 14.02 shall be paid for in cash.

The Trustee (or other Paying Agent appointed by the Company) shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written notice of withdrawal thereof in accordance with the provisions of Section 14.03.

If any Security is to be purchased only in part, (i) if such Security is a Definitive Security, such Definitive Security shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal of the Security so surrendered, or, (ii) if such Security is a Global Security, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Security as to the reduction in the principal amount represented thereby for the purchased portion of the principal of such Global Security.

(d) The Company shall give the Trustee and Paying Agent and each Holder a written notice of the Fundamental Change within [30 calendar] days after the effective date of such Fundamental Change (such notice, the "*Fundamental Change Purchase Right Notice*") and of the purchase right at the option of Holders arising as a result thereof. Such notice shall be either by first class mail or, with respect to Global Securities, in accordance with the Applicable Procedures.

The Fundamental Change Purchase Right Notice shall specify (if applicable):

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the Fundamental Change Expiration Time and that such time is the deadline prior to which a Holder must exercise the purchase right pursuant to this Article 14;
- (iv) the Fundamental Change Purchase Price;
- (v) the Fundamental Change Purchase Date;
- (vi) the name and address of the Paying Agent and the Exchange Agent, if applicable;
- (vii) the applicable Exchange Rate and any adjustments to the applicable Exchange Rate;
- (viii) that Securities with respect to which a Fundamental Change Purchase Notice has been delivered by a Holder may be exchanged only if the Holder withdraws the Fundamental Change Purchase Notice in accordance with this Section 14.03;
- (ix) that the Holder shall have the right to withdraw the Fundamental Change Purchase Notice as to any Securities prior to the Fundamental Change Expiration Time; and
- (x) the procedures that Holders must follow to require the Company to purchase their Securities.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Securities pursuant to this Section 14.02.

Notwithstanding anything herein to the contrary, the Company shall not be required to deliver a Fundamental Change Notice or to purchase any Securities upon the occurrence of a Fundamental Change if the Company has delivered a notice of redemption of all of the Securities in accordance with Section 3.07(b), unless and until there is a default in the payment of the redemption price.

Contemporaneously with providing such Fundamental Change Purchase Right Notice, the Company shall publish a notice containing the information in such notice in a newspaper of general circulation in The City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time.

(e) Notwithstanding anything to the contrary herein, no Securities may be purchased by the Company at the option of Holders upon a Fundamental Change if the principal amount of such Securities has been accelerated, and such acceleration has not been rescinded, on or prior to the relevant Fundamental Change Purchase Date (except in the case of an acceleration resulting from a Default by the Company's in the payment of the Fundamental Change Purchase Price with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Definitive Securities held by it during the acceleration of such Securities (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Purchase Price with respect to such Securities) and shall deem to be canceled any instructions for book-entry transfer of such Securities in compliance with the procedures of the Depository, in which case, upon such return or cancellation, as the case may be, the Fundamental Change Purchase Notice will respect thereto shall be deemed to have been withdrawn.

SECTION 14.03 Withdrawal of Fundamental Change Purchase Notice

A Holder may withdraw a Fundamental Change Purchase Notice, in whole or in part, by means of a written notice of withdrawal delivered to the Paying Agent in accordance with this Section 14.03 at any time prior to the Fundamental Change Expiration Time, specifying:

- (i) the principal amount of the Securities with respect to which such notice of withdrawal is being submitted,
- (ii) if such Securities are Definitive Securities, the certificate numbers of the withdrawn Securities, and
- (iii) the principal amount, if any, of such Security that remains subject to the original Fundamental Change Purchase Notice, which portion must be in principal amounts of \$1.00 or an integral multiple thereof;

provided, however, that, in the case of Global Securities, the withdrawal notice must comply with Applicable Procedures of the Depository.

The Paying Agent will promptly return to the respective Holders thereof any Definitive Securities with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with the provisions of this Section 14.03.

SECTION 14.04 Deposit of Fundamental Change Purchase Price

(a) Prior to 11:00 a.m., New York City time, on the Fundamental Change Purchase Date, the Company shall deposit with the Trustee (or other Paying Agent appointed by the Company or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust) an amount of money (in immediately available funds if deposited on the Fundamental Change Purchase Date) sufficient to pay on the Fundamental Change Purchase Date the Fundamental Change Purchase Price with respect to all of the Securities to be repurchased on such date. Subject to receipt of funds and/or Securities by the Trustee (or other Paying Agent appointed by the Company), payment for each Security as to which a Fundamental Change Repurchase Notice has been delivered (and not withdrawn) prior to the Fundamental Change Expiration Time

shall be made on the later of (x) the Fundamental Change Purchase Date with respect to such Security (*provided* the Holder has satisfied the conditions to the payment of the Fundamental Change Purchase Price in Section 14.02), and (y) the time of book-entry transfer or the delivery of such Security to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 14.02, by mailing checks for the amount payable to the Holders of such Securities entitled thereto as they shall appear in the Security Register; *provided, however*, that payments in respect of Global Securities shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee.

(b) If the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to purchase on the Fundamental Change Purchase Date all the Securities or portions thereof that are to be purchased on the Fundamental Change Purchase Date, then, on and after the Fundamental Change Purchase Date, (i) such Securities shall cease to be outstanding and interest, if any, shall cease to accrue on such Securities, whether or not book-entry transfer of the Securities has been made and whether or not the Securities have been delivered to the Trustee or Paying Agent and (ii) all other rights of the Holders of such Securities shall terminate, other than (A) the right to receive the Fundamental Change Purchase Price upon delivery or transfer of the Securities, and (B) if the Fundamental Change Purchase Date falls after the close of business on a Regular Record Date but on or prior to the close of business on related Interest Payment Date the right of the Holder of record on such Regular Record Date to receive the interest payable in respect of such Interest Payment Date.

SECTION 14.05 Covenant to Comply with Applicable Laws Upon Repurchase of Securities

In connection with any offer to purchase the Securities pursuant to this Article 14, the Company shall, if required:

- (i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other applicable tender offer rules under the Exchange Act;
- (ii) file a Schedule TO or any successor or similar schedule under the Exchange Act, if required; and
- (iii) otherwise comply with all applicable federal and state securities laws,

in each case, so as to permit the rights under this Article 14 to be exercised, and the obligations under this Article 14 to be performed, in each case, in the time and in the manner specified herein.

SECTION 14.06 Repayment to the Company

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 14.04 exceeds the aggregate Fundamental Change Purchase Price of the Securities or portions thereof that the Company is obligated to purchase as of the Fundamental Change Purchase Date, then, following the Fundamental Change Purchase Date, the Paying Agent shall promptly return any such excess to the Company.

ARTICLE 15
Company Optional Exchange

SECTION 15.01 Company Optional Exchange

The Company, at its option, may elect to exchange (a “*Company Optional Exchange*”) all or any portion of the outstanding Securities for the amounts and types of consideration due upon exchange specified in Section 13.04 based on the applicable Exchange Rate then in effect and the exchange amount for the Securities being exchanged on the applicable Exchange Date if (but only if) the Daily VWAP of the Common Stock has been at least 160% of the Exchange Price then in effect (x) on the Trading Day immediately preceding the date on which the Company provides the Exchange Notice in accordance with Section 15.02 and (y) for at least 20 Trading Days (whether or not consecutive) during the 30 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date on which the Company provides the Exchange Notice in accordance with Section 15.02.

SECTION 15.02 Notice of Optional Exchange; Selection of Securities

(a) In order for the Company to exercise its right to elect a Company Optional Exchange of all or, as the case may be, any part of the outstanding Securities pursuant to Section 15.01, (i) the Company shall fix a date for exchange (an “*Exchange Date*”) and (ii) the Company or, at its written request received by the Trustee not less than three Scheduled Trading Days prior to date of the giving of the Exchange Notice (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company, shall deliver or cause to be delivered a notice of such Company Optional Exchange (an “*Exchange Notice*”) not less than 40 nor more than 60 Scheduled Trading Days prior to the Exchange Date to each Holder of Securities so to be exchanged at its last address as the same appears on the Security Register and shall give written notice of the Exchange Date to the Paying Agent (if other than the Trustee); *provided, however*, that, if the Company shall give such notice, it shall also give written notice of the Exchange Date to the Trustee. The Exchange Date must be a Business Day.

(b) The Exchange Notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Exchange Notice or any defect in the Exchange Notice to the Holder of any Security shall not affect the validity of the proceedings for the exchange of any other Security.

(c) Each Exchange Notice shall specify:

(i) the Exchange Date;

(ii) the “exchange amount” on the Exchange Date for such Company Optional Exchange (including the applicable Company Optional Exchange Make-Whole Amount) applicable to each \$1,000 principal amount of a Security;

(iii) the Exchange Rate on the Exchange Date for such Company Optional Exchange;

(iv) (A) if the Exchange Date is prior to the Final Settlement Method Election Date, a statement that the Company has the right to elect Cash Settlement, Physical Settlement or Combination Settlement at any time on or prior to the Business Day prior to the Settlement Date or (B) if the Exchange Date is on or after the Final Settlement Method Election Date, the Settlement Method applicable to such Company Optional Exchange;

(v) that a Holder of a Security has the right to exchange such Security pursuant to Section 13.05 prior to the Exchange Date for such Company Optional Exchange;

(vi) a comparison of (x) the consideration to be delivered to a Holder that exchanges such Holder's Security in a Holder-elected exchange pursuant to Section 13.03 prior to the Exchange Date for such Company Optional Exchange and (y) the consideration to be delivered in such Company Optional Exchange to such Holder on the Exchange Date for such Company Optional Exchange;

(vii) in respect of any such Holder-elected exchange prior to the Exchange Date for such Company Optional Exchange, the place or places where such Securities are to be surrendered for such exchange;

(viii) in respect of any such Holder-elected exchange prior to the Exchange Date for such Company Optional Exchange, that Holders may surrender their Securities for such exchange at any time prior to the close of business on the Business Day immediately preceding the Exchange Date in respect of such Company Optional Exchange;

(ix) in respect of any such Holder-elected exchange prior to the Exchange Date for such Company Optional Exchange, the procedures an exchanging Holder must follow to so exchange its Securities;

(x) the CUSIP or other similar numbers, if any, assigned to the Securities; and

(xi) in case the Securities are to be exchanged in part only, the identification and principal amounts of the Securities to be exchanged; and that on and after the Exchange Date, upon surrender of such Security, a new Security in principal amount equal to the unexchanged portion thereof shall be issued.

An Exchange Notice shall be irrevocable.

(d) If fewer than all of the outstanding Securities are to be exchanged in any Company Optional Exchange, the Trustee shall select the Securities or portions thereof of a Global Note or the Securities in certificated form to be exchanged (in principal amounts of \$1.00 or multiples thereof) by lot, on a pro rata basis or by another method the Trustee considers to be fair and appropriate in accordance with the Applicable Procedures of the Depository. If any Security selected for partial exchange in any Company Optional Exchange is surrendered for a Holder-elected exchange in part after such selection, the portion of the Security surrendered for a Holder-

elected exchange shall be deemed (so far as may be possible) to be the portion selected for such Company Optional Exchange.

SECTION 15.03 Exchange of Securities Upon Company Optional Exchange

Any Company Optional Exchange pursuant to this Article 15 shall be made in compliance with the provisions of Sections 13.03 and 13.04 and the other applicable provisions of Article 13.

SECTION 15.04 Restrictions on Exchange

The Company may not exchange any Securities pursuant to this Article 15 on any date if the principal amount of the Securities has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Exchange Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Settlement Amount with respect to such Securities).

SECTION 15.05 Securities Exchanged in Part. Upon surrender of a Security that is exchanged in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company's expense) a new Security equal in principal amount to the unexchanged portion of the Security surrendered.

ARTICLE 16
MISCELLANEOUS

SECTION 16.01 Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA § 318(c), such TIA-imposed duties shall control. If any provision hereof limits, qualifies or conflicts with a provision of the TIA which is required to be a part of and govern this Indenture, such required provision of the TIA shall control. If any provision of this Indenture modifies or excludes any provision of the TIA that may be so modified or excluded, the provision of the TIA shall be deemed to apply to this Indenture as so modified or shall be excluded, as the case may be.

SECTION 16.02 Notices. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Company or any Guarantor:

CBL & Associates HoldCo II, LLC
2030 Hamilton Place Blvd., Suite 500,
Chattanooga, Tennessee 37421-6000
Attention: [Chief Financial Officer]

if to the REIT:

CBL & Associates HoldCo II, LLC
2030 Hamilton Place Blvd., Suite 500,
Chattanooga, Tennessee 37421-6000
Attention: [Chief Financial Officer]

if to the Trustee or Collateral Agent:

Wilmington Savings Fund Society, FSB
500 Delaware Avenue, 11th Floor
Wilmington, DE 19801
Email: phealy@wsfsbank.com
Attention: Patrick Healy

With a copy to (which shall not constitute notice):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Email: Mark.Somerstein@ropesgray.com
Attention: Mark Somerstein, Esq.

The Company, the REIT, any Guarantor, the Trustee or the Collateral Agent by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Securityholder shall be delivered pursuant to the Applicable Procedures of the depository (in the case of a Global Security) or mailed, to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar (if a Definitive Security) and shall be sufficiently given if so delivered or mailed within the time prescribed. Any notice or communication will also be so mailed or delivered electronically to any Person described in TIA § 313(c), to the extent required by the TIA. Notwithstanding any provision of this Indenture to the contrary, so long as the Securities are evidenced by Global Securities, any notice to the Securityholders shall be sufficient if given in accordance with the Applicable Procedures of the Depository within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Any notice or communication to the Company, the REIT or any Guarantor shall be deemed given or made as of the date so delivered if personally delivered or if delivered electronically, in PDF format; when receipt is acknowledged, if telecopied; and seven calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee). Any notice or communication to the Trustee or Collateral Agent shall only be deemed delivered upon receipt.

If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee or Collateral Agent shall be effective only upon receipt.

Notwithstanding any other provision of this Indenture or the Securities, where this Indenture or any Security provides for notice of any event (including any notice of redemption or purchase) to a Securityholder of a Global Security (whether by mail or otherwise), such notice

shall be sufficiently given if given to the Depository pursuant to its Applicable Procedures, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 16.03 Communication by Holders with Other Holders. Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the REIT, any Guarantor, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 16.04 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company or the REIT to the Trustee to take or refrain from taking any action under this Indenture, the Company or the REIT shall furnish to the Trustee:

- (1) an Officer's Certificate in form satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel in form satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 16.05 Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) must comply with the provisions of TIA § 314(e) and shall include:

- (1) a statement that the individual making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document,

but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of any Person may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or any Guarantor stating that the information with respect to such factual matters is in the possession of the Company or such Guarantor unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 16.06 When Securities Disregarded. Notwithstanding anything to the contrary in this Indenture or any other Note Document, Section 316(a) of the TIA (including the last sentence thereof) is hereby expressly excluded from this Indenture and the other Note Documents for all purposes. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver, consent or approval or other action of Holders, Securities owned by the Company, the REIT, any Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, the REIT or any Guarantor shall be disregarded and deemed not to be outstanding, except that (i) Securities owned by Specified Holders shall not be so disregarded and (ii) for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver, consent approval or other action of Holders, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned that have been pledged in good faith shall not be so disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver, consent, approval or other action of Holders with respect to the Securities and that the pledgee is not the Company, the REIT, any Guarantor or any other Subsidiary of the Company. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

SECTION 16.07 Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 16.08 Legal Holidays. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 16.09 Governing Law. The Laws of the State of New York (including Section 5-1401 of the New York General Obligations Law) shall govern and be used to construe this Indenture, the Limited Guarantee and the Securities without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.

SECTION 16.10 Force Majeure. Neither the Trustee nor the Collateral Agent shall Incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God, epidemic, pandemic or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility); it being understood that the Trustee and the Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 16.11 Waiver of Jury Trial. EACH OF THE COMPANY, THE REIT, THE GUARANTORS, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES, THE GUARANTEES, THE GUARANTY AGREEMENTS, THE OTHER NOTE DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 16.12 No Recourse Against Others. A director, officer, employee, incorporator or stockholder, as such, of the Company, the REIT or any Guarantor shall not have any liability for any obligations of the Company or the REIT under the Securities or this Indenture or of such Guarantor under its Note Guarantee, this Indenture or any other Note Document or for any claim based on, in respect of, or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such claims and liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 16.13 Successors. All agreements of the Company and the REIT in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of the Subsidiary Guarantors in this Indenture shall bind their respective successors.

SECTION 16.14 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes.

SECTION 16.15 Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for

convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 16.16 Severability. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 16.17 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or any Guarantor or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 16.18 Benefits of Indenture.

Nothing in this Indenture or in the Securities or the Security Documents, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors hereunder and thereunder, and the Holders of Securities and the Collateral Agent (and, solely in the case of the Security Documents, the holders of Secured Obligations), any benefit or any legal or equitable right, remedy or claim under this Indenture or the Security Documents.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

CBL & ASSOCIATES HOLDCO II, LLC, as the
Company

By: _____
Name:
Title:

CBL & ASSOCIATES PROPERTIES, INC., as the
REIT

By: _____
Name:
Title:

GUARANTORS:

[To come.]

TRUSTEE AND COLLATERAL AGENT:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as the Trustee and Collateral Agent

By: _____
:
Name
Title:

[Signature Page to Indenture]

Collateral and Credit Support for Securities

Category 1–

Certain Mall Assets

- Brookfield Square
- Dakota Square
- Eastland Mall (including (Parcel(s) in Main Project))
- Harford Mall
- Laurel Park Place
- Meridian Mall (leasehold)
- Mid Rivers Mall
- Monroeville Mall and Annex
- Monroeville Mall - Anchor
- Monroeville Mall - District
- Northpark Mall
- Old Hickory Mall
- Parkway Place
- South County Center
- St. Clair Square (fee)
- St. Clair Square (leasehold)
- Stroud Mall (leasehold)
- Stroud Mall (fee)
- York Galleria

Certain Associated Centers & Other Properties

- 840 Greenbrier Circle

Category 2

None.

Category 3 –

- Alamance Crossing – West
- Brookfield Square – Bluemound Road parcel (fee)/Lifestyle Center
- Brookfield Square – Bluemound Road parcels (leasehold)/Lifestyle Center
- Brookfield Square – Moreland Road Outparcels⁷
- CoolSprings Crossing
- CoolSprings Crossing – Parcel(s) in the Main Project

⁷ Brookfield Square – Mooreland Road Outparcels. These parcels are not currently subdivided from the mall tract. Upon completion of the subdivision, these outparcels will be released from Brookfield Square in Category 1 (including a release from any mortgage or pledge related thereto) and placed in Category 3.

- Cross Creek – Sears - Parcel(s) in the Main Project
- Courtyard at Hickory Hollow
- Cross Creek Mall – Sears
- Dakota Square - Parcel(s) in the Main Project
- Dakota Square – Mgmt GL Parcels
- East Towne Mall – Outparcel
- East Towne Mall – Parcel
- Eastgate Mall – Sears
- Eastgate Mall – Shops at Eastgate
- Eastland Mall – Macy’s
- Fayette Mall – Parcel(s) in the Main Project⁸
- Frontier Square
- Gunbarrel Pointe
- Hamilton Place – Sears
- Hamilton Place – Sears – Parcel(s) in the Main Project
- Hanes Mall – Restaurants
- Harford Mall – Annex
- Jefferson Mall – Macy’s / Round 1
- Jefferson Mall – Sears
- Jefferson Mall – Self Development
- Kirkwood Mall – Mgmt GL Parcels
- Laurel Park Mall – Parcel(s) in the Main Project
- Layton Hills Mall – Mgmt GL Parcels
- Layton Hills Mall – Outparcel II
- Mall del Norte TX Outparcel
- Mayfaire Town Center – Mgmt GL Parcels
- Meridian Mall – Parcel(s) in the Main Project (leasehold)
- Meridian Mall – Parcel(s) in the Main Project (fee)
- Mid Rivers Mall – Parcel(s) in the Main Project
- Monroeville Mall - Parcel(s) in the Main Project
- Northgate Mall – Outparcel
- Northgate Mall Sears TBA – Outparcels
- Northpark Mall – Parcel(s) in the Main Project
- Northpark Mall – Mgmt GL Parcels
- Parkdale Mall – Corner (Self Dev. Tract 4/Pad B)
- Parkdale Mall - Macy’s
- Parkdale Mall – Mgmt GL Parcels
- Pearland Town Center – Mgmt GL Parcels
- Pearland Town Center – Self Development (Parcel 8)

⁸ Fayette Mall – Parcel(s) in the Main Project is currently encumbered, but the parties hereto agree that upon such property’s release (which is expected to occur in connection with the extension and modification of the existing loan secured by Fayette Mall), such property shall be included in Category 3.

- Post Oak Mall – Mgmt GL Parcels
- Shoppes @ St. Clair
- South County Center – Parcel(s) in the Main Project
- South County Center – Mgmt GL Parcels
- Southaven Towne Center – Parcel(s) in the Main Project
- Southpark Mall – Dick’s Sporting Goods
- St. Clair Square – Parcel(s) in the Main Project
- Sunrise Commons
- The Landing at Arbor Place
- The Landing at Arbor Place – Parcel(s) in the Main Project
- The Plaza at Fayette (including Parcel(s) in Main Project and Johnny Carino’s Redevelopment)
- Valley View Mall – Parcel(s) in the Main Project
- Volusia Mall – Restaurant Village
- Volusia Mall – Sears TBA
- WestGate Crossing
- West Towne Crossing
- West Towne Crossing – Parcel(s) in the Main Project
- West Towne Mall – Restaurant District
- York Galleria – Parcel(s) in the Main Project

Category 4 –

Joint Venture Properties

Malls

- Coastal Grand Mall and District
- Coastal Grand Mall – Dick’s Sporting Goods
- Coastal Grand OP (fee)
- Coastal Grand OP (leasehold)
- CoolSprings Galleria
- CoolSprings Macy’s Outparcel (leasehold)
- Friendly Shopping Center
- Friendly Center – Belk Homestore
- Governor’s Square
- Kentucky Oaks
- Northgate Mall – JCP
- Northgate Mall – Sears
- Oak Park Mall
- Outlet Shoppes at Atlanta – Tract 1A
- Outlet Shoppes at Atlanta – Tract 1A1
- Outlet Shoppes at Atlanta – Outparcel
- Outlet Shoppes at Atlanta – Tract 1B and others
- Outlet Shoppes at El Paso – OP

- Outlet Shoppes at El Paso – OP II
- Outlet Shoppes at El Paso – Phase I and Phase II
- Outlet Shoppes at El Paso – .2763 Acre Tract
- Outlet Shoppes at Gettysburg – Phase I
- Outlet Shoppes at Gettysburg – Phase II
- Outlet Shoppes at Laredo
- Outlet Shoppes of the Bluegrass
- Outlet Shoppes of the Bluegrass – Phase II
- Outlet Shoppes of the Bluegrass – OP Tract 11
- Outlet Shoppes of the Bluegrass – OP Tract 8
- Shops at Friendly Center – Phase I and II
- West County Center

Associated Centers

- Coastal Grand Outparcel – Fee Outparcels
- Governor’s Square Plaza
- York Town Center
- York Town Center – Former Pier 1

Community Centers

- Ambassador Town Center
- Fremaux Town Center Phase I and II
- Hammock Landing – Phase I
- Hammock Landing – Phase II
- Pavilion at Port Orange – Phase I
- Promenade at D’Iberville
- Shoppes at Eagle Point

Storage

- Eastgate Mall – Self Storage
- Hamilton Place – Self Storage
- Mid Rivers – Self Storage
- Parkdale Mall – Self Storage

Other

- Hamilton Corner – AAA Parcel
- Hamilton Place – ALOFT Hotel
- Statesboro – Land
- Pavilion at Port Orange West JV – Apts

Other Encumbered Properties

- Alamance Crossing – East
- Arbor Place Main Mall (Arbor Place II, LLC)
- Asheville Mall⁹
- Brookfield Square – Sears and Street Shops
- Cross Creek Mall
- Eastgate Mall¹⁰
- Fayette Mall and Fayette Mall – Sears Renovation¹¹
- Greenbriar Mall¹²
- Jefferson Mall
- Northwoods Mall
- Park Plaza Mall¹³
- Parkdale Mall
- Parkdale Crossing (including Lifeway Christian Redevelopment)
- Southpark Mall
- Volusia Mall
- Westgate Mall

Category 5

None.

Category 6

None.

Category 7 –

- CBL Center – Phase I and II
- Hamilton Corner
- Hamilton Crossing and Expansion

⁹ The parties hereto agree that any interest in Asheville Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

¹⁰ The parties hereto agree that any interest in Eastgate Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

¹¹ Fayette Mall – Sears Renovation is not encumbered as of the Effective Date, but the parties hereto agree that such property shall be added as collateral to the existing encumbrance as part of the upcoming extension and modification of the existing loan.

¹² The parties hereto agree that any interest in Greenbier Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

¹³ The parties hereto agree that any interest in Park Plaza Mall will be released upon foreclosure or conveyance of the property in satisfaction of the loan.

- Hamilton Place – Regal Cinema
- Hamilton Place – Lebcon (Land)
- Hamilton Place Mall and OP
- The Shoppes at Hamilton Place
- The Terrace

Category 8 –

- Alamance Crossing, LLC
- Alamance Crossing - OP
- Arbor Place - APWM, LLC
- Arbor Place - OP
- CBL/Cherryvale I, LLC - vacant property
- Cross Creek – Sears - Parcel(s) in the Main Project (vacant lot 2)
- Dakota Square OP
- Eastgate Mall – Self-Development
- Hanes Mall – Lot 2A
- Gulf Coast Galleria (D’Iberville CBL Land, LLC)
- Gulf Coast Town Center - Peripheral IV - Land
- Gulf Coast Town Center - Phase III - Land
- Hickory Point Mall - OP
- Imperial Valley Commons - Kohl’s and Land
- Imperial Valley Mall - OP
- Jacksonville Regal Cinema Mgmt
- Meridian Mall - Land E. Lansing (leasehold interest)
- Meridian Mall - Township Property (leasehold interest)
- Meridian Mall – Management Fee Parcel
- Mid Rivers Land LLC (vacant parcels)
- Northpark Mall/Joplin, LLC Hollywood Parcels
- Pavilion at Port Orange – Phase II
- Pearland Town Center – Outparcel TX Land LLC
- Southaven Towne Center vacant parcels
- The Landing at Arbor Place - OP

Release Prices Schedule

<u>Property</u>	<u>Release Price (\$ in millions)</u>
Brookfield Square	19.0
Dakota Square	26.0
Eastland Mall (incl. Parcel(s) in Main Project)	5.0
Harford Mall	18.0
Laurel Park Place	9.0
Meridian Mall (leasehold)	13.0
Mid Rivers Mall	22.1
Monroeville Mall and Annex	18.7
Monroeville Mall – Anchor	4.7
Monroeville Mall – District	3.3
Northpark Mall	24.6
Old Hickory Mall	6.0
Parkway Place	42.0
South County Center	32.2
St. Clair Square (fee and leasehold)	60.0
Stroud Mall (fee and leasehold)	6.0
York Galleria	10.0
840 Greenbrier Circle	4.5

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PROVISIONS RELATING TO SECURITIES**1. Definitions****1.1 Definitions**

Capitalized terms used in this Appendix and not otherwise defined shall have the meanings provided in the Indenture. For the purposes of this Appendix and the Indenture as a whole, the following terms shall have the meanings indicated below:

“Definitive Security” means a certificated Security that does not include the Global Securities Legend.

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Global Securities” has the meaning set forth in Section 2.1 hereof.

“Global Securities Legend” means the legend set forth under that caption in Exhibit A to the Indenture.

“Securities Custodian” means the custodian with respect to a Global Security (as appointed by the Depository) or any successor Person thereto and shall initially be the Trustee.

1.2 Other Definitions

Term:

“Agent Members”

“Global Security”

Defined in Section:

2.1(c)

2.1(b)

2. The Securities**2.1 Form and Dating**

The Securities shall be issued in the form of one or more global notes (a “*Global Security*” and are collectively referred to herein as “*Global Securities*”). The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee and on the schedules thereto as hereinafter provided.

The Company shall execute and the Trustee shall, pursuant to an order of the Company signed by two Officers, authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of the Depository for such Global Security or Global Securities or the nominee of such Depository and (ii) shall be delivered by the Trustee to such Depository or pursuant to such Depository’s instructions or held by the Trustee as Securities Custodian.

Members of, or participants in, the Depository (“*Agent Members*”) shall have no rights under the Indenture with respect to any Global Security held on their behalf by the Depository or by the Trustee as Securities Custodian or under such Global Security, and the Company, the Trustee and any agent of the Company or the Trustee shall be entitled to treat the Depository as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Security.

Except as provided in Section 2.3 or 2.4, owners of beneficial interests in Global Securities shall not be entitled to receive physical delivery of certificated Securities.

2.2 Authentication. The Trustee shall authenticate and deliver on the Issue Date, an aggregate principal amount of \$150,000,000 of 7.0% Exchangeable Senior Secured Notes due 2028. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated.

2.3 Transfer and Exchange.

(a) Transfer and Exchange of Definitive Securities. When Definitive Securities are presented to the Registrar with a request:

(A) to register the transfer of such Definitive Securities; or

(B) to exchange such Definitive Securities for an equal principal amount of Definitive Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Definitive Securities surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing.

(b) Restrictions on Transfer of a Definitive Security for a Beneficial Interest in a Global Security. A Definitive Security may not be exchanged for a beneficial interest in a Global Security except upon satisfaction of the requirements set forth below. Upon receipt by the Registrar of a Definitive Security, duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, together with written instructions directing the Trustee to make, or to direct the Securities Custodian to make, an adjustment on its books and records with respect to such Global Security to reflect an increase in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depository account to be credited with such increase, then the Trustee shall cancel such Definitive Security and cause, or direct the Securities Custodian to cause, in accordance with the standing instructions and

procedures existing between the Depository and the Securities Custodian, the aggregate principal amount of Securities represented by the Global Security to be increased by the aggregate principal amount of the Definitive Security to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Definitive Security so cancelled. If no Global Securities are then outstanding and the Global Security has not been previously exchanged for certificated Securities pursuant to Section 2.4, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officer's Certificate, a new Global Security in the appropriate principal amount.

- (c) Transfer and Exchange of Global Securities. (i) The transfer and exchange of Global Securities or beneficial interests therein shall be effected through the Depository, in accordance with the Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depository therefor. A transferor of a beneficial interest in a Global Security shall deliver to the Registrar a written order given in accordance with the Applicable Procedures containing information regarding the participant account of the Depository to be credited with a beneficial interest in such Global Security. The Registrar shall, in accordance with such instructions, instruct the Depository to credit to the account of the Person specified in such instructions a beneficial interest in the applicable Global Security and to debit the account of the Person making the transfer the beneficial interest in the Global Security being transferred.
- (i) If the proposed transfer is a transfer of a beneficial interest in one Global Security to a beneficial interest in another Global Security, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Security to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Security from which such interest is being transferred.
- (ii) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4), a Global Security may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.
- (d) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a Global Security have either been exchanged for Definitive Securities, redeemed, purchased or cancelled, such Global Security shall be returned to the Depository for cancellation or retained and cancelled by the Trustee. At any time

prior to such cancellation, if any beneficial interest in a Global Security is exchanged for Definitive Securities, transferred in exchange for an interest in another Global Security, redeemed, purchased, exchanged for Common Stock or cancelled, the principal amount of Securities represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction, and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security will be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(e) Obligations with Respect to Transfers and Exchanges of Securities

- (i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate, Definitive Securities and Global Securities at the Registrar's request.
- (ii) No service charge shall be made for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges not involving any transfer pursuant to Sections 2.06, 2.07, 2.09, 3.06, 4.03, 4.04, 9.05, 13.03(b) or 14.02(c) of the Indenture or pursuant to Section 2.3 or 2.4 of this Appendix).
- (iii) Prior to the due presentation for registration of transfer of any Security, the Company, the Trustee, the Paying Agent or the Registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Company, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.
- (iv) All Securities issued upon any transfer or exchange pursuant to the terms of the Indenture shall evidence the same debt and shall be entitled to the same benefits under the Indenture as the Securities surrendered upon such transfer or exchange.

(f) No Obligation of the Trustee

- (i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or any other Person with respect to the accuracy

of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

- (ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

2.4 Definitive Securities. (a) A Global Security deposited with the Depository or with the Trustee as Securities Custodian for the Depository pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of Definitive Securities in an aggregate principal amount equal to the principal amount of such Global Security, in exchange for such Global Security, only if such transfer complies with Section 2.3 hereof and (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security and the Depository fails to appoint a successor depository or if at any time such Depository ceases to be a “clearing agency” registered under the Exchange Act, and, in either case, a successor depository is not appointed by the Company within 90 days of such notice, or (ii) an Event of Default has occurred and is continuing or (iii) the Company, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of certificated Securities under the Indenture.

- (b) Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section 2.4 shall be surrendered by the Depository to the Trustee located at its principal corporate trust office to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal

amount of Definitive Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section 2.4 shall be executed, authenticated and delivered only in minimum denominations of \$1.00 principal amount and any integral multiple thereof and registered in such names as the Depository shall direct.

- (c) Subject to the provisions of Section 2.4(b) hereof, the registered Holder of a Global Security shall be entitled to grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under the Indenture or the Securities.
- (d) In the event of the occurrence of any of the events specified in Section 2.4(a)(i), (ii) or (iii) hereof, the Company shall promptly make available to the Trustee a reasonable supply of Definitive Securities in definitive, fully registered form without interest coupons. In the event that such Definitive Securities are not issued, the Company expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 6.06 or Section 6.07 of the Indenture, the right of any beneficial owner of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial owner's Securities as if such Definitive Securities had been issued.

[FORM OF FACE OF SECURITY]

[Global Securities Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

No.
CUSIP No.
ISIN

\$

7.0% Exchangeable Senior Secured Notes due 2028

CBL & Associates HoldCo II, LLC, a Delaware limited liability company, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of _____ Dollars [as may be increased or decreased as set forth on the attached Schedule of Increases or Decreases in Global Security] on November 15, 2028.

Interest Payment Dates: [May 15] and [November 15].

Regular Record Dates: [May 1] and [November 1].

Additional provisions of this Security are set forth on the other side of this Security.

Dated:

CBL & ASSOCIATES HOLDCO II, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON SAVINGS FUND SOCIETY, FSB

as Trustee, certifies that this is one of the Securities referred to in the Indenture.

By: _____
Authorized Signature

[FORM OF REVERSE SIDE OF SECURITY]

7.0% Exchangeable Senior Secured Notes due 2028

1. Interest

CBL & Associates HoldCo II, LLC, a Delaware limited liability company (such company, and its successors and assigns under the Indenture hereinafter referred to, being herein called the “*Company*”) promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company shall pay interest semiannually in arrears on [May 15] and [November 15] of each year, commencing [May 15], 2022. Interest on the Securities shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from [November 1], 2021. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay interest on overdue principal at the rate borne by this Security, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

Interest on the Securities will accrue at the annual rate set forth above and will be payable solely in cash. Interest payable at Stated Maturity, upon redemption or repurchase of the Securities shall be payable in cash.

2. Method of Payment

The Company shall pay interest on the Securities (except defaulted interest) to the Persons who are registered holders of Securities at the close of business on the [•] or [•] (whether or not a Legal Holiday) next preceding the Interest Payment Date even if Securities are cancelled after the Regular Record Date and on or before the Interest Payment Date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal, premium and interest and any other cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. Payments in respect of the Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by the Depository. The Company will make all payments in respect of a certificated Security (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; provided, however, that payments on a certificated Security will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, Wilmington Savings Fund Society, FSB, a national banking association (the “*Trustee*”), will act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Company or any

of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Company originally issued the Securities under the Indenture dated as of [November 1], 2021 (the “*Indenture*”), among the Company, the REIT, the Guarantors named therein and the Trustee and Collateral Agent. The terms of the Securities include those stated in the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. To the extent any provision of any Security conflicts with the express provisions of the Indenture, the provisions of this Indenture shall govern and be controlling. The Securities are subject to all such terms, and Securityholders are referred to the Indenture. The Securities are entitled to the benefits of the Security Documents, subject to the terms of the Note Documents, including the Collateral Agency and Intercreditor Agreement.

The Indenture contains covenants that, among other things, limit the ability of the Company and its subsidiaries to Incur additional indebtedness; engage in transactions with affiliates; create liens on assets; transfer or sell assets; guarantee indebtedness; and consolidate, merge or transfer all or substantially all of its assets and the assets of its subsidiaries. These covenants are subject to important exceptions and qualifications.

5. No Mandatory Redemption; Optional Redemption

The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Securities. Except as set forth under Section 4.03 or Section 4.04 and in Article 14 of the Indenture, the Company shall not be required to repurchase the Securities at the option of the Holders.

Except upon a Company-elected exchange as to which the Company has elected cash settlement effected in accordance with Article 15 of the Indenture and except as set forth below, the Company shall not be entitled to redeem or otherwise prepay the Securities at the Company’s option at any time.

On or after [August 15], 2028, the Company may redeem the Securities at its sole option, at any time in whole or in part, upon not less than 10 nor more than 60 days’ notice, at a redemption price equal to 100% of the principal amount of the Securities to be redeemed plus interest accrued thereon to but not including the redemption date (provided that interest payments due on or prior to the redemption date will be paid to the record Holders of such Securities on the relevant record date).

6. Notice of Redemption

Notice of optional redemption pursuant to paragraph 5 will be sent at least 10 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at such Holder’s registered address. If money sufficient to pay the redemption price of and accrued interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and

after such date interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

7. Exchange of Securities

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, prior to the close of business on the Scheduled Trading Day immediately preceding the Maturity Date, to exchange this Security or any portion thereof that is \$1.00 or an integral multiple thereof, for shares of Common Stock or cash (as elected by the Company), together with cash in lieu of any fractional shares, at the Exchange Rate specified in the Indenture (as adjusted from time to time as provided in the Indenture) and based on the exchange amount (as defined in the Indenture) of the Security or portion thereof being exchanged.

Subject to the provisions of the Indenture, the Company, at its option, may elect to exchange all or any portion of the outstanding Securities for shares of Common Stock, cash or a combination of cash and Common Stock (as elected by the Company), together with cash in lieu of any fractional shares, at the Exchange Rate specified in the Indenture (as adjusted from time to time as provided in the Indenture) and based on the exchange amount (as defined in the Indenture and including the Company Optional Exchange Make Whole Amount) of the Securities being exchanged, if (but only if) the Daily VWAP of the Common Stock has been at least 160% of the Exchange Price then in effect (x) on the Trading Day immediately preceding the date on which the Company provides the notice of such exchange and (y) for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date on which the Company provides such notice.

8. Repurchase Offers

Upon certain Asset Sales or Release Trigger Events, any Holder of Securities will have the right to cause the Company to repurchase all or any part of the Securities of such Holder at a repurchase price payable in cash as provided in, and subject to the terms of, the Indenture. Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of this Security or any portion thereof (in principal amounts of \$1.00 or integral multiples thereof) on the Fundamental Change Purchase Date at a price equal to the Fundamental Change Purchase Price.

9. Guarantees; Security

The payment by the Company of the principal of, and premium and interest on, the Securities is fully and unconditionally guaranteed on a joint and several senior basis by each of the Guarantors to the extent set forth in the Indenture. The Securities and Note Guarantees will be secured on a first-priority basis (subject only to Permitted Collateral Liens), on an equal and ratable basis with the holders of the Other Secured Notes Obligations, by the Collateral as provided in the Indenture and the Security Documents. Upon the Collateral Release/Covenant Revision Trigger Date, certain of the Collateral, and the Note Guarantees of certain of the Guarantors, will be released, and certain of the covenants in the Indenture will be modified, all as provided in the Indenture.

10. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in minimum denominations of \$1.00 principal amount and integral multiples of \$1.00. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities for a period of 15 days before a selection of Securities to be redeemed or 15 days before an Interest Payment Date.

11. Security Documents; Junior Lien Intercreditor Agreement

Each Securityholder, by accepting a Security, shall be deemed to have agreed to and accepted the terms and conditions of the Security Documents (including the Collateral Agency and Intercreditor Agreement) and the Junior Lien Intercreditor Agreement, if any, and the performance by the Trustee and the Collateral Agent of their respective obligations and the exercise of their respective rights thereunder and in connection therewith.

12. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

13. Unclaimed Money

If money for the payment of principal or interest, if any, remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

14. Discharge and Defeasance

Subject to certain conditions provided in the Indenture, the Company at any time shall be entitled to terminate some or all of its obligations under the Securities and the Indenture and to the release of liens on the Collateral if the Company deposits with the Trustee cash in U.S. dollars, U.S. Government Obligations or a combination thereof for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

15. Amendment; Waiver

The Indenture, the Security Documents or the Securities may be amended or supplemented, and any existing Default or Event of Default or compliance with any provision of the Indenture, the Security Documents or the Securities may be waived as provided in the Indenture.

Subject to certain exceptions set forth in the Indenture, the Company, the Guarantors, the Trustee and the Collateral Agent, if applicable, may amend any of the Indenture, the Securities or the other Note Documents without notice to or consent of any Securityholder to, among other

things, (a) cure any ambiguity, omission, mistake, defect or inconsistency, (b) to add or release Guarantees with respect to the Securities, including any Note Guarantees, in each case in compliance with the Note Documents, (c) comply with any requirements of the SEC in connection with qualifying the Indenture under the TIA, (d) make, complete or confirm any grant of Collateral permitted or required by any of the Note Documents, and (e) to release or subordinate Liens on Collateral in accordance with the Note Documents.

Section 316(a) of the Trust Indenture Act is expressly excluded from the Indenture and the other Note Documents for all purposes. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver, consent, approval or other action of Holders, Securities owned by the Company, any Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Guarantor shall be disregarded and deemed not to be outstanding, except that Securities owned by Specified Holders (as defined in the Indenture) shall not be so disregarded.

16. Defaults and Remedies

The Events of Default relating to the Securities are set forth in the Indenture. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is in the interest of the Holders.

17. Trustee Dealings with the Company

Subject to certain limitations imposed by the TIA, each of the Trustee and the Collateral Agent under the Indenture, in its individual or any other capacity (including its capacity as Collateral Agent under the Indenture), may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee or Collateral Agent, as the case may be.

18. No Recourse Against Others

A director, officer, employee, incorporator or stockholder, as such, of the Company or any Guarantor shall not have any liability for any obligations of the Company under the Securities, the Note Guarantees, the Indenture or any other Note Document or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder

waives and releases all such claims and liability. The waiver and release are part of the consideration for the issue of the Securities.

19. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Security.

20. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

21. CUSIP Numbers

The Company has caused CUSIP and ISIN numbers to be printed on the Securities and has directed the Trustee to use such numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

22. Governing Law

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THIS NOTE AND THE NOTE DOCUMENTS WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Security in larger type. Requests may be made to:

CBL & Associates HoldCo II, LLC
2030 Hamilton Place Blvd., Suite 500,
Chattanooga, Tennessee 37421-6000
Attention: [Chief Financial Officer]

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Sign exactly as your name appears on the other side of this Security.

Signature

Signature Guarantee:

Signature must be guaranteed

Signature

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("*STAMP*") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, *STAMP*, all in accordance with the Securities Exchange Act of 1934, as amended.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 4.03 or 4.04 or 14.02 of the Indenture, check the box:

4.03

4.04

14.02

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 4.03 or 4.04 or 14.02 of the Indenture, state the amount in principal amount (integral multiples of \$1.00): \$

Dated:

Your Signature:

(Sign exactly as your name appears on the other side of this Security.)

Signature Guarantee:

(Signature must be guaranteed)

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“*STAMP*”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, *STAMP*, all in accordance with the Securities Exchange Act of 1934, as amended.

FORM OF GUARANTY SUPPLEMENTAL INDENTURE

[] SUPPLEMENTAL INDENTURE (this “*Supplemental Indenture*”), dated as of [•], 2021, among [Name of Future Guarantor(s)] (together with its successors and assigns under the Indenture, the “*New Guarantor*”), a subsidiary of CBL & Associates HoldCo II, LLC, a Delaware limited liability company (together with its successors and assigns under the Indenture, the “*Company*”), CBL & Associates Properties, Inc., a Delaware corporation (together with its successors and assigns under the Indenture, the “*REIT*”), the existing Guarantors (as defined in the Indenture referred to herein), the Company and Wilmington Savings Fund Society, FSB, as trustee under the Indenture referred to herein (in such capacity, together with its successors and assigns under the Indenture, the “*Trustee*”) and the collateral agent under the Indenture referred to herein (in such capacity, together with its successors and assigns under the Indenture, the “*Collateral Agent*”). The New Guarantor and the existing Guarantors are sometimes referred to collectively herein as the “*Guarantors*,” or individually as a “*Guarantor*.”

WITNESETH

WHEREAS, the Company, the REIT and the existing Guarantors have heretofore executed and delivered to the Trustee and the Collateral Agent an indenture (the “*Indenture*”), dated as of [November 1], 2021, relating to the 7.0% Exchangeable Senior Secured Notes due 2028 (the “*Securities*”) of the Company;

WHEREAS, Section 4.07 of the Indenture in certain circumstances requires the Company to cause a Subsidiary that is not then a Guarantor (i) to become a Guarantor by executing a supplemental indenture and (ii) to deliver an Opinion of Counsel to the Trustee as provided in such Section; and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Company, the REIT, the Guarantors, the Trustee and the Collateral Agent are authorized to execute and deliver this Supplemental Indenture to amend or supplement the Indenture without the consent of any Holder;

NOW THEREFORE, to comply with the provisions of the Indenture and in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the other Guarantors, the Company, the REIT and the Trustee and the Collateral Agent mutually covenant and agree for the equal and ratable benefit of the Holders of the Securities as follows:

1. **CAPITALIZED TERMS.** Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. **AGREEMENT TO GUARANTEE.** The New Guarantor hereby agrees, jointly and severally, with all other Guarantors, to unconditionally Guarantee to each Holder and to the Trustee and the Collateral Agent the Notes Obligations, to the extent set forth in the Indenture and subject to the provisions in the Indenture. The obligations of the Guarantors to the Holders of Securities and to the Trustee and the Collateral Agent pursuant to the Note Guarantees and the

Indenture are expressly set forth in Article 10 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantees.

3. EXECUTION AND DELIVERY. The New Guarantor agrees that its Note Guarantee shall remain in full force and effect notwithstanding any failure to endorse on each Security a notation of such Note Guarantee.

4. NEW YORK LAW TO GOVERN. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE AND ENFORCE THIS SUPPLEMENTAL INDENTURE.

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Supplemental Indenture may be executed in multiple counterparts which, when taken together, shall constitute one instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE AND THE COLLATERAL AGENT. Except as otherwise expressly provided herein, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee or Collateral Agent by reason of this Supplemental Indenture. This Supplemental Indenture is executed and accepted by the Trustee and the Collateral Agent subject to all the terms and conditions set forth in the Indenture with the same force and effect as if those terms and conditions were repeated at length herein and made applicable to the Trustee and the Collateral Agent with respect hereto. Neither the Trustee nor the Collateral Agent make any representation or warranty as to the validity or sufficiency of this Supplemental Indenture or with respect to the recitals contained herein, all of which recitals are made solely by the other parties hereto.

8. RATIFICATION OF INDENTURE; SUPPLEMENTAL INDENTURES PART OF INDENTURE. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Securities heretofore or hereafter authenticated and delivered shall be bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____, 20__.

[NEW GUARANTOR]

By: _____
Name:
Title:

[OTHER GUARANTORS]

By: _____
Name:
Title:

**CBL & ASSOCIATES HOLDCO II, LLC, as the
Company:**

By: _____
Name:
Title:

**CBL & ASSOCIATES PROPERTIES, INC., as
the REIT**

By: _____
Name:
Title:

Signature Page

**WILMINGTON SAVINGS FUND SOCIETY,
FSB, as Trustee and Collateral Agent**

By:

Name

Title:

Signature Page

FORM OF MORTGAGE

[To come]

C-1

[FORM OF NOTICE OF EXCHANGE]

To: CBL & ASSOCIATES HOLDCO II, LLC
WILMINGTON SAVINGS FUND SOCIETY, FSB, as Exchange Agent

The undersigned registered owner of this Security hereby exercises the option to exchange this Security, or the portion hereof (that is a principal of \$1.00 or an integral multiple thereof) below designated, for shares of Common Stock or cash or a combination of shares of Common Stock and cash (as elected by the Company) in accordance with the terms of the Indenture referred to in this Security, and directs that any shares of Common Stock issuable and deliverable and any cash payable upon such exchange, together with any cash for any fractional share, and any Securities representing any unexchanged principal amount hereof, be issued and delivered or paid, as applicable, to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Security not exchanged are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any, in accordance with Section 13.10 of the Indenture. Any amount if required pursuant to Section 13.04(e) of this Indenture, an amount equal to interest payable on the next Interest Payment Date accompanies this Security. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Securities are to be delivered, other than to and in the name of the registered Holder.

Fill in for registration of shares if to be issued, and Securities if to be delivered, other than to and in the name of the registered Holder:

(Name)

(Street Address)

(City, State and Zip Code) Please print name and address

Principal amount (in multiple of \$1.00) to be exchanged (if less than all):
\$

Social Security or Other Taxpayer
Identification Number

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Security in every particular without alteration or enlargement or any change whatever.

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Revised Covenants and Related Revised Definitions

Revised Covenants:

1. **SECTION 4.02** Limitation on Indebtedness. (a) The Company shall not permit any Category 1 Subsidiary to Incur, directly or indirectly, any Indebtedness.

(b) Notwithstanding Section 4.02(a), a Category 1 Subsidiary shall be entitled to Incur or cause or permit the Incurrence of any or all of the following Indebtedness:

(1) (a) the Securities originally issued on the Issue Date and (b) Guarantees of Indebtedness Incurred under the Securities; provided that the principal amount of Indebtedness permitted to be Incurred under this clause (1) shall be reduced by the principal amount of any Securities that are repurchased or redeemed or exchanged for Capital Stock of the REIT pursuant to the terms of this Indenture;

(2) [Reserved];

(3) [Reserved];

(4) Non-Recourse Mortgage Indebtedness (including any Refinancing Indebtedness Incurred in respect thereto) that is (x) Incurred by a Category 1 Subsidiary that directly owns solely any Property set forth in Category 1 on Annex I hereto and (y) secured by assets of such Category 1 Subsidiary, solely to the extent of a Permitted Lien on such Excluded Property and on the Capital Stock of such Category 1 Subsidiary, if required pursuant to the terms of such Indebtedness, incurred pursuant to clause (2) of the definition of Permitted Liens; provided that (i) any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04, (ii) the aggregate amount of such Non-Recourse Mortgage Indebtedness Incurred after the Issue Date (including any Refinancing Indebtedness Incurred in respect thereto) shall not exceed \$100,000,000 at any time outstanding and (iii) the loan-to-value ratio of any such Non-Recourse Mortgage Indebtedness Incurred (including any Refinancing Indebtedness Incurred in respect thereto) on any individual Property as determined by an independent mortgage appraisal conducted on behalf of and for the benefit of the lender(s) of such Non-Recourse Mortgage Indebtedness shall be at least 50%;

(5) [Reserved];

(6) [Reserved];

(7) [Reserved];

(8) [Reserved];

(9) [Reserved];

(10) [Reserved];

(11) Subordinated Obligations of any of the Category 1 Subsidiaries if, on the date of such Incurrence and after giving effect thereto on a pro forma basis, the Debt Service Ratio exceeds 1.375 to 1 for the most recently ended four fiscal quarters;

(12) Indebtedness of any Category 1 Subsidiary in an aggregate principal amount which, when taken together with all other Indebtedness of any Category 1 Subsidiaries outstanding under this clause (12) on the date of such Incurrence, does not exceed \$75 million at any one time outstanding;

(13) [Reserved];

(14) [Reserved];

(15) [Reserved];

(16) [Reserved];

(17) [Reserved];

(18) unsecured Indebtedness of any Category 1 Subsidiary to the Company or another Subsidiary; provided that such Indebtedness is subordinated in right of payment to the Obligations of such Category 1 Subsidiary in respect of the Securities;

(19) Indebtedness constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(20) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred in connection with the Plan of Reorganization or any other acquisition or disposition of any business, assets or a Subsidiary in accordance with the terms of this Indenture, other than, for the avoidance of doubt, guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(21) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(22) obligations (including reimbursement obligations with respect to letters of credit and bank guarantees) in respect of performance, bid, appeal and surety bonds and completion guarantees and similar obligations provided by any Category 1 Subsidiary in the ordinary course of business or consistent with past practice or industry practice; and

(23) Indebtedness in respect of any ordinary course cash management activities of any Category 1 Subsidiary.

(c) Notwithstanding Section 4.02(b), no Category 1 Subsidiary shall Incur any Indebtedness pursuant to Section 4.02(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of any Category 1 Subsidiary unless such Indebtedness shall (i) not be secured by a Lien on any property or asset and (ii) be subordinated in right of payment to the applicable Note Guarantee to at least the same extent as such Subordinated Obligations.

(d) For purposes of determining compliance with this Section 4.02, a Guarantee by one or more Category 1 Subsidiaries of Indebtedness (other than the Secured Debt Obligations) Incurred by the Company or one or more Subsidiaries that are not Category 1 Subsidiaries, as applicable, shall be an Incurrence of Indebtedness in the principal amount of the Indebtedness so guaranteed for purposes of calculating any amount of Indebtedness. For purposes of determining compliance with this Section 4.02, accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of deferred financing costs or original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or Preferred Stock, in the form of additional shares of Disqualified Stock or Preferred Stock, and the accretion or amortization of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, shall, in each case, not be deemed to be an Incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock.

2. SECTION 4.03 Limitation on Asset Sales.

The Company will not, and will not permit any Category 1 Subsidiary to, consummate an Asset Sale (including a Collateral Disposition), unless:

(1) the Company or the Category 1 Subsidiary receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Capital Stock issued or sold or otherwise disposed of; provided, that in the case of a Collateral Disposition of any Category 1 Property (or Capital Stock of a Category 1 Subsidiary that owns, directly or indirectly, any Category 1 Property), the Company or the Category 1 Subsidiary receives consideration at the time of the Asset Sale that is at least equal to the greater of (i) the release price of such Category 1 Property set forth on Annex II hereto and (ii) the Fair Market Value of the Category 1 Property sold or otherwise disposed of;

(2) at least 75% of the consideration received in the Asset Sale by the Company or the Category 1 Subsidiary is in the form of cash or cash equivalents;

(3) funds in an amount equal to the Net Available Cash are deposited directly in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien); and

(4) in the case of an Asset Sale of Capital Stock of a Category 1 Subsidiary, such Asset Sale constitutes a disposition of all Capital Stock of such Category 1 Subsidiary owned by the Company or any Subsidiary;

provided, that any Collateral Disposition constituting any Event of Loss, loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title to or use of Collateral shall not be required to satisfy the conditions set forth in clauses (1) or (2) of this paragraph.

For the purposes of this Section 4.03, the following are deemed to be cash or cash equivalents:

(1) [Reserved];

(2) [Reserved]; and

(3) any securities, notes or other obligations received by the Company or any Category 1 Subsidiary from the transferee that are promptly converted by the Company or such Category 1 Subsidiary into cash within 180 days of the closing of such Asset Sale, to the extent of cash received in that conversion.

The Company will not permit any Category 1 Subsidiary to issue any Capital Stock of such Category 1 Subsidiary to, or otherwise permit any such Capital Stock to be owned by, any Person other than the Company or any Category 1 Subsidiary, except upon a Collateral Disposition of all such Capital Stock to such a Person that complies with this Section 4.03.

Pending the final application of any Net Available Cash from an Asset Sale (including a Collateral Disposition but excluding any Asset Sale of a Property, or of the Capital Stock of a Subsidiary solely owning a Property, set forth in Category 8 on Annex I hereto), upon the receipt by the Company or a Category 1 Subsidiary of the Net Available Cash attributable to an Asset Sale, (i) the Company shall notify the Collateral Agent of such receipt and (ii) the Company shall cause, or shall cause such Category 1 Subsidiary to cause, such amounts (such amounts, the “*Pending Use Cash*”) to be deposited directly by the Company or such Category 1 Subsidiary in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and the Pending Use Cash will constitute Category 1 Collateral pending application as a Permitted Excess Cash Use or as hereinafter described.

Within 360 days (or 720 days with respect to an Event of Loss) after the actual receipt of any Net Available Cash by the Company or a Category 1 Subsidiary from an Asset Sale (including an Event of Loss and a Collateral Disposition), the Company or the applicable Category 1

Subsidiary may apply such Net Available Cash (each such application a “*Permitted Excess Cash Use*”):

(A) to make a capital expenditure to construct or improve any Property used or useful in a Related Business and that is a Category 1 Property or is deemed a Category 1 Property pursuant to Section 4.14 (such assets, “*CapEx Assets*”); or

(B) to acquire any Additional Assets constituting a Property that is a Category 1 Property or is deemed a Category 1 Property pursuant to Section 4.14 (such CapEx Assets or Additional Assets referenced in clauses (A) and (B), collectively, the “*Permitted Excess Cash Use Assets*”);

provided that in the case of clauses (A) or (B), prior to or simultaneously with or within ten (10) Business Days after the acquisition or capital expenditure to construct or improve such Permitted Excess Cash Use Assets (or [30] days in the case of a mortgage), (i) the Collateral Agent has been granted a valid, enforceable perfected first-priority security interest (subject only to Permitted Collateral Liens) in such Permitted Excess Cash Use Assets in accordance with Section 4.14 and (ii) in the manner specified in Section 11.02(c) and Section 11.04(e) of this Indenture, the Company or such Category 1 Subsidiary shall have executed and delivered to the Collateral Agent such Security Documents referred to therein or as shall otherwise be reasonably necessary to vest in the Collateral Agent a valid, enforceable perfected security interest or other Liens in or on such Permitted Excess Cash Use Assets and to have such Permitted Excess Cash Use Assets added to the Category 1 Collateral, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions, if any) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents and an Officer’s Certificate and Opinion of Counsel as to the satisfaction of the foregoing requirements (such Opinions of Counsel and Officer’s Certificate also to be delivered to the Trustee); and thereupon all provisions of this Indenture relating to the Category 1 Collateral shall be deemed to relate to such Permitted Excess Cash Use Assets to the same extent and with the same force and effect.

Any Net Available Cash from any Asset Sale (including any Collateral Disposition) that are not applied as provided in, and within the time period set forth in, the preceding paragraph of this Section 4.03 will constitute “*Asset Sale Excess Proceeds*.” When the aggregate amount of Asset Sale Excess Proceeds exceeds \$50.0 million (any aggregate amount of Asset Sale Excess Proceeds first exceeding such threshold amount being referred to as an “*Asset Sale Trigger Event*”), within ten Business Days thereof, the Company will (x) make an Asset Sale Excess Proceeds Offer to all Holders of Securities to purchase the maximum principal amount of Securities that may be purchased at the Asset Sale Excess Proceeds Offer Price in an amount equal to such Asset Sale Excess Proceeds. “*Asset Sale Excess Proceeds Offer Price*” means, as to any Securities to be purchased in any Asset Sale Excess Proceeds Offer, (i) an amount equal to 102% for Asset Sales of Category 1 Collateral (other than any Event of Loss), and (ii) an amount equal to 100% for Asset Sales constituting Events of Loss, in the case of each of clauses (i) and (ii), of the principal amount of the Securities plus accrued and unpaid interest, if any, to the Asset Sale Excess Proceeds Offer Purchase Date (subject to the right of Holders of record on the relevant record date to receive interest due on an Interest Payment Date that is on or prior to the Asset Sale

Excess Proceeds Offer Purchase Date). Such Asset Sale Excess Proceeds Offer will be payable in cash. For the avoidance of doubt, the Asset Sale Excess Proceeds Offer Price set forth in this paragraph shall override the optional redemption price set forth in Section 3.07(b) of this Indenture. The Company may, at its option, satisfy the foregoing obligations with respect to an Asset Sale Excess Proceeds Offer prior to the expiration of the applicable 360 day or 720 day period or prior to receiving more than \$50.0 million of Asset Sales Excess Proceeds.

On the Asset Sale Excess Proceeds Offer Purchase Date, the Company will deposit with the Paying Agent such amount as will enable the Trustee, to the extent of the Securities tendered in such Asset Sale Excess Proceeds Offer, to apply such Asset Sale Excess Proceeds with respect to such Asset Sale Excess Proceeds Offer to the repurchase, at the applicable Asset Sale Excess Proceeds Offer Price, of Securities validly tendered and accepted for purchase in the Asset Sale Excess Proceeds Offer. For the avoidance of doubt, the Company's making of any Asset Sale Excess Proceeds Offer shall not constitute a redemption of Securities pursuant to Article 3 or paragraph 5 of the Securities.

If any Asset Sale Excess Proceeds remain after consummation of an Asset Sale Excess Proceeds Offer, the Company may use those Asset Sale Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate Asset Sale Excess Proceeds Offer Price payable with respect to the aggregate principal amount of Securities tendered into such Asset Sale Excess Proceeds Offer exceeds the aggregate Asset Sale Excess Proceeds the Trustee will select the Securities to be purchased on a *pro rata* basis on the basis of the aggregate principal amount of validly tendered Securities. Upon surrender of a Security that is repurchased in part, the Company shall issue in the name of the applicable Holder and the Trustee shall authenticate for such Holder at the expense of the Company a new Security equal in principal amount to the non-repurchased portion of the Security surrendered. Upon completion of each Asset Sale Excess Proceeds Offer, the amount of Asset Sale Excess Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Securities pursuant to an Asset Sale Excess Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.03, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions by virtue of such compliance.

In the event that, pursuant to this Section 4.03 hereof, the Company shall be required to commence an offer (an "*Asset Sale Excess Proceeds Offer*") to all Holders to purchase the maximum principal amount of Securities that may be purchased at the Asset Sale Excess Proceeds Offer Price with an amount equal to the Asset Sale Excess Proceeds (the "*Asset Sale Excess Proceeds Offer Amount*"), the Company shall follow the procedures specified below:

(b) The Asset Sale Excess Proceeds Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "*Asset Sale Excess Proceeds Offer Period*"). No later than five Business Days after the termination of the Asset Sale Excess Proceeds Offer Period (the "*Asset*

Sale Excess Proceeds Offer Purchase Date”), the Company shall purchase and pay the Asset Sale Excess Proceeds Offer Price with respect to all Securities validly tendered and accepted for purchase, or if the amount of Securities validly tendered at the Asset Sale Excess Proceeds Offer Price with respect to all Securities validly tendered is greater than the Asset Sale Excess Proceeds Offer Amount, the Company shall purchase and pay for Securities validly tendered at the Asset Sale Excess Proceeds Offer Price in an aggregate amount equal to the Asset Sale Excess Proceeds Amount. Payment for any Securities so purchased shall be made in the manner prescribed in the Securities.

(c) Upon the commencement of an Asset Sale Excess Proceeds Offer, the Company shall send a notice to each of the Holders with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Asset Sale Excess Proceeds Offer. The Asset Sale Excess Proceeds Offer shall be made to all Holders. The notice, which shall govern the terms of the Asset Sale Excess Proceeds Offer, shall state:

(1) that the Asset Sale Excess Proceeds Offer is being made pursuant to this Section 4.03 hereof, and the length of time the Asset Sale Excess Proceeds Offer shall remain open, including the time and date the Asset Sale Excess Proceeds Offer will terminate (the “*Asset Sale Excess Proceeds Termination Date*”);

(2) the Asset Sale Excess Proceeds Offer Price;

(3) that the aggregate amount to be applied to purchase the Securities in the Asset Sale Excess Proceeds Offer will consist of an amount equal to the Asset Sale Excess Proceeds (and specifying such amount);

(4) that any Security not tendered or accepted for payment shall continue to accrue interest;

(5) that, unless the Company defaults in making such payment, any Security accepted for payment pursuant to the Asset Sale Excess Proceeds Offer shall cease to accrue interest after the Asset Sale Excess Proceeds Offer Purchase Date;

(6) that Holders electing to have a Security purchased pursuant to any Asset Sale Excess Proceeds Offer shall be required to surrender the Security, properly endorsed for transfer, together with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Security completed and such customary documents as the Company may reasonably request, to the Company or a Paying Agent at the address specified in the notice, before the Asset Sale Excess Proceeds Termination Date;

(7) that Holders shall be entitled to withdraw their election if the Company or the Paying Agent, as the case may be, receives, prior to the Asset Sale Excess Proceeds Termination Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased;

(8) that, if the aggregate principal amount of Securities surrendered by Holders at the Asset Sale Excess Proceeds Offer Price exceeds the Asset Sale Excess Proceeds Offer Amount, the Trustee shall select the Securities to be purchased on a pro rata basis on the basis of the aggregate principal amount of validly tendered Securities (with such adjustments as may be deemed appropriate by the Trustee so that only Securities in denominations of \$1.00, or integral multiples of \$1.00 in excess of \$1.00, shall be purchased); and

(9) that Holders whose Securities were purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered, which unpurchased portion must be equal to \$1.00 in principal amount or an integral multiple of \$1.00 in excess of \$1.00.

If any of the Securities subject to an Asset Sale Excess Proceeds Offer is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depository applicable to repurchases.

Promptly after the Asset Sale Excess Proceeds Termination Date, the Company shall, to the extent lawful, accept for payment Securities or portions thereof tendered pursuant to the Asset Sale Excess Proceeds Offer in the aggregate principal amount required by this Section 4.03 hereof, and prior to the Asset Sale Excess Proceeds Offer Purchase Date the Company shall deliver to the Trustee an Officer's Certificate stating that such Securities or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 4.03. Prior to 11:00 a.m., New York City time, on the Asset Sale Excess Proceeds Offer Purchase Date, the Company or the Paying Agent, as the case may be, shall mail or deliver to each tendering Holder an amount equal to the Asset Sale Excess Proceeds Offer Price with respect to the aggregate principal amount of the Securities validly tendered by such Holder and accepted by the Company for purchase, and the Company shall issue a new Security, and the Trustee shall authenticate and mail or deliver such new Security to such Holder, in a principal amount equal to any unpurchased portion of the Security surrendered. Any Security not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company shall publicly announce the results of the Asset Sale Excess Proceeds Offer on or before the Asset Sale Excess Proceeds Offer Purchase Date.

3. SECTION 4.04 Repurchase Upon Release Trigger Event. No later than the fifth (5th) Business Day after the occurrence of a Release Trigger Event, the Company shall deliver an Officer's Certificate to the Trustee specifying (i) such Release Trigger Event and the Collateral Release Excess Proceeds in respect thereof; (ii) any Property or Capital Stock that has become Excluded Released Property as a result of such Release Trigger Event; and (iii) any Category 1 Subsidiary that has become an Excluded Non-Guarantor Subsidiary as a result of such Release Trigger Event. The Company will, within 25 Business Days after the receipt of Net Available Cash (other than proceeds from Non-Recourse Mortgage Indebtedness permitted to be incurred pursuant to Section 4.02(b)(4) used solely for the construction or development of any Property that has been approved by the Boards of Directors of both the Company and the REIT and used for the purpose of financing a property development project, which shall not be subject to this Section 4.04) from any Release Trigger Event (the "*Collateral Release Excess Proceeds*") in an aggregate amount that exceeds \$25.0 million, offer to all Holders of Securities (the "*Collateral Release Excess*

Proceeds Offer”) to purchase Securities in an amount up to the Collateral Release Excess Proceeds with respect to such Release Trigger Event applicable to the Securities (the “*Collateral Release Excess Proceeds Offer Amount*”) at the price set forth below including accrued and unpaid interest, if any, to the purchase date (the “*Collateral Release Excess Proceeds Offer Price*”) (subject to the right of Holders of record on the relevant Regular Record Date to receive interest due on an Interest Payment Date that is on or prior to the purchase date) (such purchase date, the “*Collateral Release Excess Proceeds Purchase Date*”). For the avoidance of doubt, upon completion of each Collateral Release Excess Offer, there will remain no unapplied amount of such Collateral Release Excess Proceeds. The Company may, at its option, satisfy the foregoing obligations with respect to a Collateral Release Excess Proceeds Offer prior to having more than \$25.0 million of Collateral Release Excess Proceeds.

Pending the final application of any Net Available Cash from any Collateral Release Excess Proceeds Offer, upon the actual receipt by the Company or a Category 1 Subsidiary of the Net Available Cash attributable to Collateral Release Excess Proceeds (other than proceeds from Non-Recourse Mortgage Indebtedness permitted to be incurred pursuant to Section 4.02(b)(4) used solely for the construction or development of any Property that has been approved by the Boards of Directors of both the Company and the REIT and used for the purpose of financing a property development project, which shall not be subject to this Section 4.04), (i) the Company will notify the Collateral Agent of such receipt and (ii) the Company shall cause, or shall cause such Category 1 Subsidiary to cause, such amounts (such amounts, the “*Pending Redemption Cash*”) to be deposited directly by the Company or such Category 1 Subsidiary in a deposit account subject to a valid and perfected Lien in favor of the Collateral Agent free of any other Lien (other than the Lien of the Secured Debt Documents or any other Permitted Collateral Lien), and the Pending Redemption Cash will constitute Category 1 Collateral pending application in the Collateral Release Excess Proceeds Offer.

The Collateral Release Excess Proceeds Offer Price shall be at the prices set forth below (expressed in percentages of principal amount on the Collateral Release Excess Proceeds Purchase Date), plus accrued and unpaid interest to but excluding the Collateral Release Excess Proceeds Purchase Date (subject to the right of Holders of record on the relevant Regular Record Date to receive interest due on the relevant Interest Payment Date), if purchased during the periods set forth below:

Period	Collateral Release Excess Proceeds Offer Price
Issue Date to [May 14], 2023	100.0%
[May 15], 2023 to [May 14, 2024]	105.0%
[May 15, 2024] to [May 14, 2025]	102.5%
[May 15, 2025] and thereafter	100.0%

On the Collateral Release Excess Proceeds Purchase Date, the Company will deposit with the Trustee such respective portions of the Collateral Release Excess Proceeds as will enable the Trustee, to the extent of the Securities tendered in such Collateral Release Excess Proceeds Offer, to apply the portion of such Collateral Release Excess Proceeds equal to the amount of the Securities validly tendered and accepted for purchase in the Collateral Release Excess Proceeds

Offer plus accrued and unpaid interest to but excluding the Collateral Release Excess Proceeds Purchase Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date). For the avoidance of doubt, the Company's making of any Collateral Release Excess Proceeds Offer shall not constitute a redemption of Securities.

Any Collateral Release Excess Proceeds remaining after consummation of a Collateral Release Excess Proceeds Offer may be used for any purpose not otherwise prohibited by this Indenture. If the aggregate Collateral Release Excess Proceeds Offer Price payable in respect of the aggregate principal amount of Securities tendered into such Collateral Release Excess Proceeds Offer exceeds the Collateral Release Excess Proceeds Offer Amount, the Trustee will select the Securities to be purchased on a *pro rata* basis. Upon surrender of a Security that is repurchased in part, the Company shall issue in the name of the applicable Holder and the Trustee shall authenticate for such Holder at the expense of the Company a new Security equal in principal amount to the non-repurchased portion of the Security surrendered.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Securities pursuant to an Collateral Release Excess Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.04, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions by virtue of such compliance.

In the event that, pursuant to this Section 4.04 hereof, the Company shall be required to commence a Collateral Release Excess Proceeds Offer, the Company shall follow the procedures specified below:

(a) The Collateral Release Excess Proceeds Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "*Collateral Release Excess Proceeds Offer Period*"). No later than five Business Days after the termination of the Collateral Release Excess Proceeds Offer Period (the "*Collateral Release Excess Proceeds Offer Purchase Date*"), the Company shall purchase and pay the Collateral Release Excess Proceeds Offer Price with respect to all Securities validly tendered and accepted for purchase, or if the amount of Securities validly tendered at the Collateral Release Excess Proceeds Offer Price with respect to all Securities validly tendered is greater than the Collateral Release Excess Proceeds Offer Amount, the Company shall purchase and pay for Securities validly tendered at the Collateral Release Excess Proceeds Offer Price in an aggregate amount equal to the Collateral Release Excess Proceeds Amount. Payment for any Securities so purchased shall be made in the manner prescribed in the Securities.

(b) Upon the commencement of a Collateral Release Excess Proceeds Offer, the Company shall send, by first class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Collateral Release Excess Proceeds Offer. The Collateral

Release Excess Proceeds Offer shall be made to all Holders. The notice, which shall govern the terms of the Collateral Release Excess Proceeds Offer, shall state:

- (1) that the Collateral Release Excess Proceeds Offer is being made pursuant to this Section 4.04 hereof, and the length of time the Collateral Release Excess Proceeds Offer shall remain open, including the time and date the Collateral Release Excess Proceeds Offer will terminate (the “*Collateral Release Excess Proceeds Termination Date*”);
- (2) the Collateral Release Excess Proceeds Offer Price;
- (3) that the aggregate amount to be applied to purchase the Securities in the Collateral Release Excess Proceeds Offer will consist of an amount equal to the Collateral Release Excess Proceeds (and specifying such amount);
- (4) that any Security not tendered or accepted for payment shall continue to accrue interest;
- (5) that, unless the Company defaults in making such payment, any Security accepted for payment pursuant to the Collateral Release Excess Proceeds Offer shall cease to accrue interest after the Collateral Release Excess Proceeds Offer Purchase Date;
- (6) that Holders electing to have a Security purchased pursuant to any Collateral Release Excess Proceeds Offer shall be required to surrender the Security, properly endorsed for transfer, together with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Security completed and such customary documents as the Company may reasonably request, to the Company or a Paying Agent at the address specified in the notice, before the Collateral Release Excess Proceeds Termination Date;
- (7) that Holders shall be entitled to withdraw their election if the Company or the Paying Agent, as the case may be, receives, prior to the Collateral Release Excess Proceeds Termination Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased;
- (8) that, if the aggregate principal amount of Securities surrendered by Holders at the Collateral Release Excess Proceeds Offer Price exceeds the Collateral Release Excess Proceeds Offer Amount, the Trustee shall select the Securities to be purchased on a pro rata basis on the basis of the aggregate principal amount of validly tendered Securities (with such adjustments as may be deemed appropriate by the Trustee so that only Securities in denominations of \$1.00, or integral multiples of \$1.00 in excess of \$1.00, shall be purchased); and
- (9) that Holders whose Securities were purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities

surrendered, which unpurchased portion must be equal to \$1.00 in principal amount or an integral multiple of \$1.00 in excess of \$1.00.

If any of the Securities subject to a Collateral Release Excess Proceeds Offer is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depository applicable to repurchases.

Promptly after the Collateral Release Excess Proceeds Termination Date, the Company shall, to the extent lawful, accept for payment Securities or portions thereof tendered pursuant to the Collateral Release Excess Proceeds Offer in the aggregate principal amount required by this Section 4.04 hereof, and prior to the Collateral Release Excess Proceeds Offer Purchase Date the Company shall deliver to the Trustee an Officers' Certificate stating that such Securities or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 4.04. Prior to 11:00 a.m., New York City time, on the Collateral Release Excess Proceeds Offer Purchase Date, the Company or the Paying Agent, as the case may be, shall mail or deliver to each tendering Holder an amount equal to the Collateral Release Excess Proceeds Offer Price with respect to the aggregate principal amount of the Securities validly tendered by such Holder and accepted by the Company for purchase, and the Company shall issue a new Security, and the Trustee shall authenticate and mail or deliver such new Security to such Holder, in a principal amount equal to any unpurchased portion of the Security surrendered. Any Security not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company shall publicly announce the results of the Collateral Release Excess Proceeds Offer on or before the Collateral Release Excess Proceeds Offer Purchase Date.

4. SECTION 4.05 Limitation on Affiliate Transactions. (i) The Company shall not, and shall not permit any Category 1 Subsidiary to, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with, or for the benefit of, any Affiliate of the Company in an amount greater than \$1.0 million in any transaction or series of related transactions that relates to any Category 1 Property or any Category 1 Subsidiary (an "*Affiliate Transaction*") unless:

(1) the terms of the Affiliate Transaction are not materially less favorable to the Company or any Category 1 Subsidiary than those that could reasonably be expected to be obtained at the time of the Affiliate Transaction in arm's-length dealings with a Person who is not an Affiliate;

(2) if such Affiliate Transaction involves an amount in excess of \$5.0 million, the terms of the Affiliate Transaction are set forth in writing and a majority of the directors of the Company disinterested with respect to such Affiliate Transaction have determined in good faith that the criteria set forth in clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a Board Resolution; and

(b) The provisions of Section 4.05(a) shall not prohibit:

(1) any employment agreement or other employee compensation plan or arrangement in existence on the Issue Date or entered into thereafter in the ordinary course

of business including any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the Board of Directors;

(2) loans or advances to employees (or cancellations thereof) in the ordinary course of business in accordance with the past practices of the Company or its Subsidiaries, but in any event not to exceed \$1.0 million in the aggregate outstanding at any one time;

(3) advances to or reimbursements of employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures, in each case in the ordinary course of business of the Company or any of its Subsidiaries;

(4) the payment of reasonable compensation and fees to directors of the Company and its Subsidiaries who are not employees of the Company or its Subsidiaries;

(5) any transaction between the REIT, the Company, the Operating Partnership and/or their respective Subsidiaries;

(6) indemnities of officers, directors and employees of the Company or any Subsidiary consistent with applicable charter, by-law or statutory provisions;

(7) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company or the receipt by the Company of a cash capital contribution from its stockholders;

(8) transactions with Joint Ventures, customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, provided that in the reasonable determination of the Board of Directors or the senior management of the Company, such transactions are on terms not materially less favorable to the Company or any Category 1 Subsidiary than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company;

(9) transactions between the Company and any Category 1 Subsidiary and any Person, a director of which is also a director of the Company or any director or indirect parent company of the Company, and such director is the sole cause for such Person to be deemed an Affiliate of the Company or any Subsidiary; provided, however, that such director shall abstain from voting as a director of the Company or such direct or indirect parent company, as the case may be, on any matter involving such other Person;

(10) any transaction with Affiliates pursuant to arrangements in existence on the Issue Date pursuant to which those Affiliates own, or are entitled to acquire, working, overriding royalty or other similar interests in particular properties operated by the Company or any Category 1 Subsidiary or in which the Company or any one or more Category 1 Subsidiaries also own an interest;

(11) mergers, consolidations or sales of all or substantially all assets permitted by, and complying with, the provisions of Section 5.01, 5.02 and 5.03;

(12) the execution of the restructuring transactions pursuant to the Plan of Reorganization and the payment of all fees and expenses related thereto or required by the Plan of Reorganization; and

(13) transactions undertaken in good faith by the Company for the purpose of improving the consolidated tax efficiency of the Company and its Subsidiaries and not for the purpose, or with the effect, of circumventing any provision set forth in this Indenture.

5. SECTION 4.06 Liens and Negative Pledge. The Company shall not, and shall not permit any Category 1 Subsidiary, directly or indirectly, to:

(a) Incur or suffer to exist any Lien (other than Permitted Collateral Liens) on any Category 1 Collateral, or any direct or indirect ownership interest of the Company or any Subsidiary in any Person owning any Category 1 Collateral, whether owned at the Issue Date or thereafter acquired, other than Permitted Collateral Liens; or

(b) permit any Category 1 Collateral or any other properties or assets held by the any Category 1 Subsidiary, as applicable, to be subject to a Negative Pledge (other than pursuant to the Secured Debt Documents), other than (i) any properties or assets held by any Excluded Non-Guarantor Subsidiary or (ii) any Excluded Property.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies.

6. SECTION 4.07 Future Guarantors. The Company and each Category 1 Subsidiary shall cause each Category 1 Subsidiary that is not already a Subsidiary Guarantor (other than any Excluded Non-Guarantor Subsidiary) to, within 30 calendar days of the date on which such Person became such a Subsidiary, (i) execute and deliver to the Trustee and the Collateral Agent, if applicable, a Guaranty Supplemental Indenture pursuant to which such Subsidiary shall Guarantee payment of the Securities on the same terms and conditions as those set forth in this Indenture and a joinder to the Collateral Agency and Intercreditor Agreement and (ii) deliver to the Trustee an Opinion of Counsel satisfactory to the Trustee as to the authorization, execution and delivery by such Subsidiary of such Guaranty Supplemental Indenture and such joinder and the validity and enforceability against such Subsidiary of this Indenture (including the Note Guarantee of such Subsidiary) and the Collateral Agency and Intercreditor Agreement.

7. SECTION 4.14 After Acquired Property. If at any time the Company or any Category 1 Subsidiary acquires or otherwise owns any asset or property (other than Collateral or Excluded Property) constituting After-Acquired Property that is Category 1 Collateral (except as otherwise provided under Section 4.03), both:

(x) to the extent the After-Acquired Property so acquired or otherwise owned (directly or through the acquisition of Capital Stock) constitutes Property, such Property shall be deemed “Category 1 Property”, and

(y) the Company or such Category 1 Subsidiary shall cause a valid, enforceable, perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien in or on such After-Acquired Property (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and execute and deliver to the Collateral Agent the following documents and certificates and any other documents and certificates required by this Section 4.14, Article 11 or any other provision of this Indenture:

(1) to the extent such After-Acquired Property constitutes Property, (x) a Mortgage with respect to such After-Acquired Property, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office), (y) Security Documents with respect to all personal property of the Company or such Category 1 Subsidiary constituting Category 1 Collateral, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee) and (z) the remaining Real Property Collateral Requirements;

(2) to the extent such After Acquired Property constitutes Capital Stock, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all

other personal property of the Company or such Category 1 Subsidiary constituting Category 1 Collateral, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(3) to the extent of any material After Acquired Property other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of, and perfection steps required by, the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(4) to the extent such After-Acquired Property constitutes Property, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require; and

(5) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect.

Revised Definitions:

"Additional Assets" means:

- (1) any property, plant, equipment or other tangible assets used or useful in a Related Business;
- (2) the Capital Stock of a Person that becomes a Category 1 Subsidiary as a result of the acquisition of such Capital Stock by the Company or another Subsidiary; or
- (3) [Reserved];

provided, however, that any such Subsidiary or Person described in clause (2) above is primarily engaged in a Related Business.

“*Asset Sale*” means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Category 1 Subsidiary, including (x) any disposition by means of a merger, consolidation or similar transaction, (y) any Event of Loss, loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title or use and (z) a disposition in connection with a Sale and Leaseback Transaction (each referred to for the purposes of this definition as a “disposition”), of (1) any assets or other rights or property that constitute Category 1 Collateral; or (2) any other assets (other than Capital Stock) of the Company or any Category 1 Subsidiary outside of the ordinary course of business of such Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(A) a disposition of (x) any Category 1 Collateral constituting Category 1 Property by a Category 1 Subsidiary to a Person that, immediately after such disposition, constitutes a Qualifying Category 1 Subsidiary Guarantor or (y) any Category 1 Collateral (other than any Category 1 Property) by the Company or any Category 1 Subsidiary to any Person that, immediately after such disposition, constitutes the Company or a Category 1 Subsidiary that is a Subsidiary Guarantor so long as (a) the covenants in Section 5.01, Section 5.02 and Section 5.03, to the extent applicable, are satisfied or do not expressly prohibit such transfer and (b) if such transfer includes Category 1 Collateral, such transfer does not occur until and unless the transferee has caused a valid, enforceable, perfected first priority Lien in or on such Category 1 Collateral (subject only to Permitted Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and has executed and delivered to the Collateral Agent the following documents and certificates and any other documents and certificates required by Section 4.14, Article 11 or any other provision of this Indenture:

(a) to the extent such Category 1 Collateral constitutes any Category 1 Property, (x) a Mortgage with respect to such Category 1 Collateral, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office) and (y) Security Documents with respect to all personal property of such transferee constituting Category 1 Collateral, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee);

(b) to the extent such Category 1 Collateral constitutes Capital Stock of a Category 1 Subsidiary, a stock pledge or other Security Documents granting a security interest in the Capital Stock and all other personal property of such transferee constituting Category 1 Collateral, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(c) to the extent of any Category 1 Collateral other than Property or Capital Stock, Security Documents with respect thereto, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Security Documents;

(d) to the extent such Category 1 Collateral constitutes any Category 1 Property, title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require; and

(e) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

(B) any single transaction or series of related transactions that involves the disposition of assets having a Fair Market Value of less than \$10 million;

(C) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind (other than any property management agreement with respect to a material portion of the Properties of any Category 1 Subsidiary);

(D) [Reserved];

(E) a disposition of cash or Temporary Cash Investments;

(F) the licensing or sublicensing of intellectual property or other general intangibles and licenses, sublicenses, leases, subleases and easements of other property in the ordinary course of business which would not reasonably be expected to materially interfere with the business of the Company and its Subsidiaries, as determined in good faith by an Officer of the Company;

(G) dispositions of assets secured by Liens incurred pursuant to clause (2) of the definition of Permitted Liens to lenders or other secured parties holding such Permitted Liens to secure Indebtedness permitted to be Incurred pursuant to Section 4.02(b)(4) upon the default of, and in satisfaction of all of, such Indebtedness, to the extent the Board of Directors determines in good faith such disposition is commercially reasonable in light of the circumstances;

(H) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien));

(I) [Reserved];

(J) for purposes of Section 4.03 only, a disposition of all or substantially all the assets of the Company in accordance with Section 5.01;

(K) leases and subleases of Property in the ordinary course of business;

(L) [Reserved];

(M) any exchange of (i) assets made in the ordinary course of business for assets related to a Related Business of a comparable or greater market value or usefulness to the business of the Company as a whole, as determined in good faith by the Boards of Directors of both the Company and the REIT and (ii) like property for use in a Related Business that is allowable under Section 1031 of the Code that has been approved by the Boards of Directors of both the Company and the REIT (such assets referred to in clause (i) or like property referred to in clause (ii) so exchanged being referred to as the “*Exchanged Property*”) so long as (1) in the case of clause (ii), if such Exchanged Property includes Collateral that constitutes Property, the Fair Market Value (as determined in good faith by the Boards of Directors of both the Company and the REIT) of such Exchanged Property, together with the Fair Market Value of any prior exchanges of Exchanged Property constituting Property made pursuant to clause (ii), shall not exceed \$75.0 million in the aggregate and (2) in the case of clause (i) or (ii), if such Exchanged Property includes Collateral, such exchange shall not occur until and unless the following conditions are satisfied: (x) the Received Property (as defined below) constitutes solely Property that is a Category 1 Property or is deemed a Category 1 Property pursuant to Section 4.14, and (y) the Company or the Subsidiary Guarantor party to such exchange has caused a valid, enforceable, perfected (except, in the case of personal property, to the extent not required by this Indenture or the Security Documents) first priority Lien in or on the property or assets received in exchange for such Exchanged Property (the “*Received Property*”) (subject only to Permitted

Collateral Liens) to vest in the Collateral Agent, as security for the Secured Obligations, and has executed and delivered to the Collateral Agent the following documents and certificates and any other documents and certificates required by Section 4.14, Article 11 or any other provision of this Indenture; and

(a) (x) a Mortgage with respect to such Received Property, dated a recent date and substantially in the respective form attached as Exhibit C (such Mortgage having been duly received for recording in the appropriate recording office), (y) Security Documents with respect to all personal property of the Company or the Subsidiary Guarantor party to such exchange constituting Category 1 Collateral, dated such date and, based on the type and location of the property subject thereto, substantially in the form and with substantially the terms of the applicable Security Documents entered into on the Issue Date (such Security Documents (or financing statements in respect thereof) having been duly received for recording in the appropriate recording office), in each case, together with appropriate Opinions of Counsel (of scope and substance substantially the same as the Issue Date Opinions) with respect to, among other things, the creation, validity, perfection, enforceability and priority of such Mortgage, and other Security Documents (such Opinions of Counsel also to be delivered to the Trustee) and (z) the remaining Real Property Collateral Requirements;

(b) title and extended coverage mortgagee title insurance covering such Property, in an amount equal to no less than the Fair Market Value of such Property and such other Real Property Collateral Requirements as the Collateral Agent may reasonably require; and

(c) an Officer's Certificate and Opinion of Counsel as to satisfaction of the foregoing requirements (such Officer's Certificate and Opinion of Counsel also to be delivered to the Trustee);

(N) dispositions of receivables (including rents) in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings or the conversion of accounts receivable into notes receivable in the ordinary course of business;

(O) dispositions of obsolete, worn out, uneconomic or damaged property, equipment or other assets (other than any Property Collateral) in the ordinary course of business or consistent with past practice or industry practices that (i) are no longer economically practical or commercially desirable to maintain or used or useful in the business of the Company and its Subsidiaries as determined in good faith by the Company and (ii) are not Category 1 Collateral;

(P) [Reserved]; and

(Q) the unwinding of any cash management services or Hedging Obligations.

“*Collateral Disposition*” means any Asset Sale of assets or other rights or property that constitute Collateral under the Security Documents. The sale or issuance of Capital Stock in a Category 1 Subsidiary, such that, as a consequence, such Person no longer is a Subsidiary Guarantor, shall be deemed a Collateral Disposition of the Collateral owned by such Category 1 Subsidiary. For the avoidance of doubt, no Collateral Release shall constitute a Collateral Disposition.

“*Excluded Non-Guarantor Subsidiary*” means:

- (1) [Reserved];
- (2) [Reserved];
- (3) any Subsidiary that directly owns solely the Capital Stock of a Subsidiary that directly owns solely a Category 1 Property but only if and so long as such Category 1 Property (or Properties) is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4) and the guaranty by such Subsidiary of the Secured Obligations is not permitted by the agreements governing such Indebtedness of such Subsidiary; provided, with respect to the release of the Note Guarantee of a Subsidiary Guarantor that owns solely the Capital Stock of a Subsidiary that directly owns solely a Category 1 Property, the Release Condition shall be satisfied;
- (4) [Reserved];
- (5) [Reserved];
- (6) any Subsidiary that directly owns solely a Category 1 Property (or Properties) but only if and so long as such Property is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4); provided, with respect to the release of the Note Guarantee of a Subsidiary Guarantor that owns solely a Category 1 Property (or Properties), the Release Condition shall be satisfied; and
- (7) [Reserved].

“*Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock*” means:

- (1) [Reserved];
- (2) the Capital Stock in any Excluded Non-Guarantor Subsidiary:
 - (A) [Reserved];
 - (B) [Reserved]; or
 - (C) [Reserved];

(D) referred to in clause (6) of the definition of Excluded Non-Guarantor Subsidiary but only if and so long as (x) the Category 1 Property owned by such Subsidiary is subject to Permitted Liens granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4), (y) the pledge of such Capital Stock to secure the Secured Obligations is not permitted by the agreements governing the related Indebtedness or Refinancing Indebtedness referred to therein, and (z) the Release Condition has been satisfied;

(3) [Reserved]; and

(4) [Reserved].

“*Excluded Released Property*” means:

(1) the Capital Stock in any Excluded Non-Guarantor Subsidiary referred to in clause (2)(D) of the definition of Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock;

(2) any asset (x) constituting a Category 1 Property that either (A) was Collateral Property on the Issue Date or (B) became Collateral Property after the Issue Date upon the acquisition thereof pursuant to Section 4.14 and (y) Liens on which securing the Secured Obligations were released at the time Liens were granted to secure Non-Recourse Mortgage Indebtedness incurred pursuant to Section 4.02(b)(4) and in compliance with Section 4.04 and Section 12.05;

(3) [Reserved]; or

(4) [Reserved].

“*Excluded Property*” means any Excluded Other Property, Excluded Released Property or Excluded (Non-Pledged) Subsidiary/Joint Venture Capital Stock.

“*Permitted Collateral Liens*” means any “Permitted Liens” other than Liens specified in clauses (2), (5) or (14) of the definition of “Permitted Liens.”

“*Permitted Liens*” means, with respect to any Person:

(1) Liens pursuant to the Security Documents to secure Indebtedness and related Obligations permitted under Section 4.02(b)(1);

(2) Liens to secure Non-Recourse Mortgage Indebtedness and related Obligations permitted under Section 4.02(b)(4) so long as such Liens are limited to, and such Indebtedness and other Obligations are secured to the extent of any assets of the Company or any Subsidiary solely by, the related Excluded Property referenced in subsection (4) of Section 4.02(b);

(3) [Reserved];

- (4) [Reserved];
- (5) Liens existing on the Issue Date other than those specified in clauses (1) or (2) above;
- (6) Liens securing Junior Lien Debt in an amount which, together with the aggregate outstanding amount of all other Indebtedness secured by Liens Incurred pursuant to this clause (6), does not exceed \$75.0 million, but solely so long as such Junior Liens are subject to the Junior Lien Intercreditor Agreement;
- (7) Liens securing taxes, assessments and other charges or levies imposed by any governmental authority that are not more than 60 days overdue (or if more than 60 days overdue, are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP);
- (8) statutory Liens of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business for amounts that are not more than 60 days overdue (or if more than 60 days overdue, are being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established in accordance with GAAP);
- (9) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar applicable laws;
- (10) Liens consisting of encumbrances in the nature of zoning restrictions, easements, survey exceptions, restrictions, encroachments, and rights or restrictions of record on the use of real property (including minor defects or irregularities in title and similar encumbrances), which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person or the ownership of such property (and for the avoidance of doubt, shall include any encumbrance listed on a title insurance policy that has been issued for the benefit of the Collateral Agent);
- (11) the rights of tenants under leases or subleases not interfering with the ordinary conduct of business of such Person;
- (12) Licenses of intellectual property granted in the ordinary course of business which do not materially detract from the value of such intellectual property or impair the intended use thereof in the business of such Person;
- (13) [Reserved];
- (14) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be Incurred and secured under this Indenture; provided that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions

in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness or other Obligations being refinanced or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;

(15) [Reserved];

(16) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(17) [Reserved]; and

(18) [Reserved].

For purposes of this definition, the term “Indebtedness” shall be deemed to include interest on, and fees and expenses Incurred in connection with, such Indebtedness.

“*Release Trigger Event*” means:

(1) [Reserved];

(2) with respect to any Subsidiary (A) that directly owns solely any Category 1 Property or (B) that directly owns solely Capital Stock in a Subsidiary that owns solely a Category 1 Property constituting Property Collateral that is to become Excluded Released Property as a result of such Release Trigger Event, the Incurrence by such Subsidiary owning such Property of Non-Recourse Mortgage Indebtedness permitted pursuant to Section 402(b)(4) and secured solely by assets of such Subsidiary and by such Capital Stock, solely to the extent of a Permitted Lien on such Excluded Released Property pursuant to clause (2) of the definition of Permitted Liens; provided, any Collateral Release Excess Proceeds shall be applied in accordance with Section 4.04;

(3) [Reserved];

(4) [Reserved];

(5) [Reserved];

(6) [Reserved]; or

(7) [Reserved].

No later than five (5) Business Days after a Release Trigger Event, the Company shall deliver to the Trustee an Officer’s Certificate in respect thereof in accordance with Section 4.04.

Deleted Definitions:

“*Excluded Initial Property*”

INITIAL JOINT VENTURES

The Initial Joint Ventures shall be the following:

[To come]

F-1

INACTIVE SUBSIDIARIES

The Inactive Subsidiaries shall be the following:

[To come]

A-1

The following table sets forth the number of Additional Shares of Common Stock by which the Exchange Rate shall be increased per \$1,000 exchange amount pursuant to Section 13.02 for each Stock Price and Effective Date set forth below:

STOCK PRICE								
EFFECTIVE DATE	\$[.]							
[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]
[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]
[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]
[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]
[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]
[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]	[.]