

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PWM PROPERTY MANAGEMENT LLC, *et al.*¹,
Debtors.

Chapter 11

Case No. 21-11445 (MFW)
(Jointly Administered)

**Re: Docket Nos. 384, 385, 387, and 401 (Motions);
and 395, 396, and 400 (Joinders)**

Hearing:
March 9, 2022, at 10:30 a.m. (E.T.)

Objection Deadline:
February 23, 2022, at 4:00 p.m. (E.T.)

**LIMITED OBJECTION OF
WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE,
AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS
TRUSTEE, TO MEZZANINE LENDERS' MOTIONS FOR ADEQUATE
PROTECTION AND RELIEF FROM STAY [D.I. 384, 385, 387, AND 401]**

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee for the holders of 245 PARK AVENUE TRUST 2017-245P, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-245P, on behalf of itself and the holders of the related Companion Loans (in that capacity, the **“Park Avenue Trustee”**), acting by and through SITUS HOLDINGS, LLC (**“Situs”**), its Special Servicer; and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee for the holders of J.P. MORGAN CHASE COMMERCIAL MORTGAGE SECURITIES TRUST 2020-LOOP, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2020-LOOP, on behalf of itself and the holders of the related Companion Loans (in that capacity, the **“West Madison Trustee”**; and the Park Avenue Trustee and the West Madison Trustee, together, the **“Trustees”**), acting by and through Situs, its Special Servicer, make this limited objection (this **“Limited Objection”**) to (i) the *Joint*

¹ The debtors in these chapter 11 cases (collectively, the **“Cases”**), along with the last four digits of each debtor's federal tax identification number, are PWM Property Management LLC (2514); 245 Park Avenue Property LLC (9531); HNA 245 Park Ave JV LLC (5043); 245 Park JV LLC (2417); 245 Park Avenue Mezz C LLC (5276); 245 Park Avenue Mezz B LLC (4961); 245 Park Avenue Mezz A LLC (4673); 181 West Madison Holding LLC (2346); and 181 West Madison Property LLC (3759). The debtors' service address for purposes of these cases is 245 Park Avenue, Floor 40, New York, New York 10167.

Motion of the Mezzanine A Lenders for Adequate Protection [D.I. 387] (the “**Mezz A Motion**”); (ii) the *Motion of Mezzanine B Lenders for Adequate Protection* [D.I. 401] (the “**Mezz B Motion**”); (iii) the *Joint Motion of the Mezzanine C Lenders for Adequate Protection* [D.I. 384] (the “**Mezz C Motion**”); (iv) the *Motion of Meritz Alternative Investment Management for Entry of an Order (I) Granting Relief from Automatic Stay under Section 362(d)(3) of Bankruptcy Code and (II) Granting Related Relief* [D.I. 385] (the “**Meritz Motion**”); and (v) the joinders in the Meritz Motion by (A) the Mezz A Lenders [D.I. 396]; (B) the Mezz B Lenders [D.I. 400]; and (C) 245 PARK MEZZ FUNDING LLC (“**SLG Lender**” and one of the Mezz C Lenders) [D.I. 395] (the Mezz A Motion, the Mezz B Motion, the Mezz C Motion, the Meritz Motion, and those joinders, collectively, the “**Motions**”)², and, in support of this Limited Objection, respectfully state as follows:

PRELIMINARY STATEMENT³

1. The Park Avenue Trustee is the Park Avenue Owner’s mortgage lender. Pursuant to the Park Avenue Mortgage Loan Documents and the Park Avenue Final Cash Collateral Order, the Park Avenue Mortgage Loan is secured by all the Park Avenue Owner’s assets, including 245 Park Avenue, all the Park Avenue Rents, and all the Park Avenue Reserves (all of which are funded from the Park Avenue Rents).

2. The West Madison Trustee is the West Madison Owner’s mortgage lender. Pursuant to the West Madison Mortgage Loan Documents and the West Madison Final Cash Collateral Order, the West Madison Mortgage Loan is secured by all the West Madison Owner’s

² All capitalized terms used but not otherwise defined in this Limited Objection have the meanings given those terms, directly or by reference, in, or as used in, the Motions or the *Declaration of Mohsin Y. Meghji, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* filed in the Cases [D.I. 9] (the “**First Day Declaration**”).

³ All capitalized terms used but not otherwise defined in this Preliminary Statement section or as provided by footnote 2 above have the meanings given those terms following this section.

assets, including 181 West Madison, all the West Madison Rents, and all the West Madison Reserves (all of which are funded from the West Madison Rents).

3. By the Motions, the Mezzanine Lenders seek, *inter alia*, to compel payment by unspecified Debtors of the following:

- Interest-only debt service on the respective Mezzanine Loan⁴ on which each Mezzanine Borrower⁵ is obligated (collectively, the “**Mezzanine Loan Debt Service**”);
- The fees and ancillary expenses required to be paid to them under each of the Mezzanine Loan Agreements (collectively, the “**Mezzanine Loan Lender Expenses**”; and the Mezzanine Loan Debt Service and the Mezzanine Loan Lender Expenses, together, the “**Mezzanine Loan Payments**”)⁶; and.
- The reserves required to be funded under each of the Mezzanine Loan Agreements (collectively, the “**Required Reserves**”)⁷.

4. The Park Avenue Owner and the West Madison Owner (collectively, the “**Owners**”), and the Mezz A Borrower, the Mezz B Borrower, and the Mezz C Borrower are each a debtor with its own respective Case. The Debtors have not been substantively consolidated and, thus, each Debtor stands on its own vis-à-vis its respective assets, liabilities, creditors, and equity security holders.

⁴ “Mezzanine Loans” is defined in the First Day Declaration, ¶ 38; and means, collectively, the Mezzanine A Loan, the Mezzanine B Loan, and the Mezzanine C Loan (each as defined and described in the same paragraph).

⁵ “Mezzanine Borrowers” is defined in the First Day Declaration, ¶ 27; and means, collectively, Debtors 245 Park Avenue Mezz A LLC (the “**Mezz A Borrower**”), 245 Park Avenue Mezz B LLC (the “**Mezz B Borrower**”), and 245 Park Avenue Mezz C LLC (the “**Mezz C Borrower**”).

⁶ For the avoidance of doubt, Meritz, by the Meritz Motion itself, does not seek payment of any Required Reserves or Mezzanine Lender Expenses, but Meritz is a Mezz A Lender, a Mezz B Lender, and a Mezz C Lender, and, by the Mezz A Motion, the Mezz B Motion, and the Mezz C Motion, is seeking that relief.

⁷ For the avoidance of doubt, the Required Reserves are the reserves that the Park Avenue Owner had been required to pay to the Park Avenue Trustee under the Park Avenue Mortgage Loan Agreement prior to the Petition Date and is now required to continue to pay to the Park Avenue Trustee under the Park Avenue Final Cash Collateral Order. Thus, this component of the Cash Payments that are part of the Requested Adequate Protection is already being funded, to the benefit of the Mezzanine Lenders, by the continuing payment thereof by the Park Avenue Owner to the Park Avenue Trustee. The Park Avenue Trustee has no objection to the Required Reserves continuing to be made and expects that they will continue to be made and utilized in accordance with the Park Avenue Mortgage Loan Agreement and the Park Avenue Final Cash Collateral Order. For its part, the West Madison Trustee has no interest in those reserves or in the source thereof, which are the Park Avenue Rents.

5. Each of the Mezzanine Borrowers owns only the sole membership interest in its direct subsidiary: the Mezz C Borrower owns only the Mezz B Borrower Equity, the Mezz B Borrower owns only the Mezz A Borrower Equity, and the Mezz A Borrower owns only the Park Avenue Owner Equity. No Mezzanine Borrower has any direct ownership interest in any asset of the Park Avenue Owner, nor does any Mezzanine Borrower have any ownership interest at all—direct or indirect—in the West Madison Owner or any of its assets.

6. Each Mezzanine Lender is a creditor of only its respective Mezzanine Borrower and is secured by only that Mezzanine Borrower's membership interest in its immediate subsidiary Debtor and the funds that may be distributed to it by that subsidiary on account of that membership interest.

7. None of the Mezzanine Borrowers has any funds with which to make the requested Mezzanine Loan Payments. Only the Owners have any funds from which those payments could be made. However, the Mezzanine Lenders (i) are not creditors of either Owner; and (ii) have no claim to or interest in any funds or any other property of either Owner.

8. Further, the funds of the Owners (i) are subject to the respective senior security interests of the Trustees; (ii) are Cash Collateral; and (iii) cannot, under the Final Cash Collateral Orders, be used to pay any Mezzanine Loan Payments. Each Final Cash Collateral Order specifically prohibits the use of the Cash Collateral generated by each Owner to make the Mezzanine Loan Payments requested by the Motions.

9. Even if the Final Cash Collateral Orders' prohibitions on making any Mezzanine Loan Payments were not fatal to the Motions as to those requested payments, the Intercreditor Agreement by which the Mezzanine Lenders are bound with respect to the Park Avenue Mortgage Loan and the Mezzanine Loans also prohibits those payments and is independently fatal to the Motions.

10. The Intercreditor Agreement contains specific acknowledgements that (i) all the parties thereto—the predecessors in interest to the Park Avenue Trustee and the Mezzanine Lenders—were “sophisticated lenders and/or investors in real estate”; and (ii) the decision of the

Mezzanine Lenders' predecessors to enter into the Mezzanine Loans was "based upon their own independent expert evaluation" of all relevant matters.

11. By the Intercreditor Agreement—

- The Mezzanine Loans, the Mezzanine Loan Documents, the liens and security interests created thereby, and all the Mezzanine Lenders' rights to payment in respect thereof are completely subordinated to the Park Avenue Mortgage Loan, the Park Avenue Mortgage Loan Documents, the liens and security interests created thereby, and the Park Avenue Trustee's rights to payment in respect thereof;
- The Mezzanine Lenders are completely barred from accepting or receiving any payment on account of any Mezzanine Loan or derived from 245 Park Avenue or any other the Park Avenue Mortgage Loan Collateral so long as the Park Avenue Mortgage Loan has not been paid in full in cash; and
- Any such payment received by any Mezzanine Lender must be held by that lender in trust for and paid over to the Park Avenue Trustee.

12. By this Limited Objection, to the extent the Motions seek to compel either Owner to pay, directly or indirectly, the Mezzanine Loan Payments to the Mezzanine Lenders as part of the Requested Adequate Protection⁸—

- The Park Avenue Trustee objects thereto on the grounds that (i) the making of the Mezzanine Loan Payments by the Park Avenue Owner would violate the Park Avenue Final Cash Collateral Order; and (ii) the receipt or acceptance of those payments by any of the Mezzanine Lenders would violate the Intercreditor Agreement and be a meaningless exercise as those payments would have to be paid over to the Park Avenue Trustee; and
- The West Madison Trustee objects thereto on the grounds that the making of the Mezzanine Loan Payments by the West Madison Owner would violate the West Madison Final Cash Collateral Order.

13. Accordingly, the Motions must be denied to the extent they seek to compel either Owner to pay, directly or indirectly, the Mezzanine Loan Payments to the Mezzanine Lenders as part of the Requested Adequate Protection.

⁸ "Requested Adequate Protection" is defined in the Mezz A Motion, first paragraph, fourth bullet, p. 2, the Mezz B Motion, first paragraph, third bullet, p. 2; and the Mezz C Motion, first paragraph, fourth bullet, p. 2; and means, collectively, the information, the super-priority administrative expense claims, the replacement liens (except as to the Mezz B Lenders, which do not seek this adequate protection), the Mezzanine Loan Payments, and the Required Reserves payments sought by the Motions.

EVIDENTIARY SUPPORT

14. This Limited Objection is evidentiarily supported by the following:

- The *Consolidated Corporate Ownership Statement and List of Equity Interest Holders Pursuant to Fed. R. Bankr. P. 1007(a)(1), 1007(a)(3), and 7007.1* (the “**Equity Interest Holders List**”) filed as part of the *Voluntary Petition for Non-Individuals Filing for Bankruptcy* of lead Debtor PWM PROPERTY MANAGEMENT, LLC (“**PWM**”), filed in the Cases [D.I. 1];
- The First Day Declaration [D.I. 9];
- The *Final Order (i) Authorizing Postpetition Use of Cash Collateral with Respect to 245 Park Avenue Property; (ii) Granting Adequate Protection to Prepetition Secured Party; and (iii) Granting Related Relief* entered Cases [D.I. 240] (the “**Park Avenue Final Cash Collateral Order**”);
- The *Final Order (i) Authorizing Postpetition Use of Cash Collateral with Respect to 181 West Madison Property; (ii) Granting Adequate Protection to Prepetition Secured Party; and (iii) Granting Related Relief* entered in the Cases [D.I. 241] (the “**West Madison Final Cash Collateral Order**”; and, together with the Park Avenue Final Cash Collateral Order, the “**Final Cash Collateral Orders**”);
- The *Schedule(s) of Assets and Liabilities* and the *Statement(s) of Financial Affairs*, including the *Global Notes and Statement of Limitations, [etc.]*, that are a part of each thereof, for, respectively, the Park Avenue Owner, the West Madison Owner, the Mezz A Borrower, the Mezz B Borrower, and the Mezz C Borrower filed in the Cases [respectively, D.Is. 372, 379, 377, 376, and 375] (for each of those Debtors, that Debtor’s “**Schedules**”; and for the Mezzanine Borrowers, collectively, the “**Mezzanine Borrower Schedules**”);
- The *Monthly Operating Report(s) for the Period Ending January 31, 2022*, for, respectively, PWM (including the *Global Notes and Statement of Limitations, [etc.]*, (the “**Global Notes**”), the *Statement of Cash Receipts and Disbursements*, the *Balance Sheet* (the “**Balance Sheet**”), the *Statement of Operations*, and the *Summary of Cash Book Balances* that are the exhibit thereto), the Park Avenue Owner, the West Madison Owner, the Mezz A Borrower, the Mezz B Borrower, and the Mezz C Borrower filed in the Cases [D.Is. respectively, 467, 473, 469, 470, 471, and 472 (for each of those Debtors, that Debtor’s “**January MOR**”; and for the Mezzanine Borrowers, collectively, the “**Mezzanine Borrower January MORs**”); and
- The *Declaration of Robert E. Records in Support of Limited Objection of Wilmington Trust, National Association, as Trustee, and Wells Fargo Bank,*

National Association, as Trustee, to Mezzanine Lenders' Motions for Adequate Protection and Relief from Stay [D.I. 384, 385, 387, and 401] filed contemporaneously herewith (the **“Records Declaration”**).

FACTS

I. Mortgage Loans and Collateral.

15. The Park Avenue Trustee is the Park Avenue Owner's mortgage lender. The Park Avenue Trustee holds and administers the \$1.2 billion principal amount Park Avenue Mortgage Loan. That loan is governed and secured by the Park Avenue Mortgage Loan Agreement⁹, the Park Avenue Mortgage¹⁰, and the other Park Avenue Mortgage Loan Documents¹¹. The collateral for that loan (collectively, the **“Park Avenue Mortgage Loan Collateral”**) is all the assets of the Park Avenue Owner, including 245 Park Avenue, all the Rents (as defined in the Park Avenue Mortgage Loan Agreement) (those Rents, the **“Park Avenue Rents”**), and all the reserves held by the Park Avenue Trustee under the Park Avenue Mortgage Loan Documents (those reserves, collectively, the **“Park Avenue Reserves”**), all of which are funded from the Park Avenue Rents. First Day Declaration, ¶¶ 26, 32, and 33; Park Avenue Final Cash Collateral Order, ¶¶ C, 10.b, and 12.a; Mezz A Motion, ¶ 5; and Meritz Motion, ¶¶ 7-8.¹²

16. The West Madison Trustee is the West Madison Owner's mortgage lender. The West Madison Trustee holds and administers the \$240 million principal amount West Madison Avenue Mortgage Loan. That loan is governed and secured by the West Madison Mortgage Loan Agreement¹³, the West Madison Mortgage¹⁴, and the other West Madison Mortgage Loan

⁹ Referred to as the Loan Agreement in the Park Avenue Final Cash Collateral Order.

¹⁰ Referred to as the Mortgage in the Park Avenue Final Cash Collateral Order.

¹¹ Referred to as the Loan Documents in the Park Avenue Final Cash Collateral Order.

¹² While no factual matters are put at issue before the Court by this Limited Objection, if any factual matters with respect to the Park Avenue Mortgage Loan Agreement or the other Park Avenue Mortgage Loan Documents at any time become at issue, the Park Avenue Trustee will, to the extent necessary, seek to have those documents admitted into evidence.

¹³ Referred to as the Loan Agreement in the West Madison Final Cash Collateral Order.

¹⁴ Referred to as the Mortgage in the West Madison Final Cash Collateral Order.

Documents¹⁵. The collateral for that loan (collectively, the **“West Madison Mortgage Loan Collateral”**) is all the assets of the West Madison Owner, including 181 West Madison, all the Rents (as defined in the West Madison Mortgage Loan Agreement) (those Rents, the **“West Madison Rents”**), and all the reserves held by the West Madison Trustee under the West Madison Mortgage Loan Documents (those reserves, collectively, the **“West Madison Reserves”**), all of which are funded from the West Madison Rents. First Day Declaration, ¶¶ 28, 43, and 44; and West Madison Final Cash Collateral Order, ¶¶ C, 10.b, and 12.a.¹⁶

II. Debtors Not Substantively Consolidated.

17. The Cases are being jointly administered but the Debtors have not been substantively consolidated. *Order Authorizing Motion of Debtors for Entry of Order (i) Directing Joint Administration of Cases; and (ii) Granting Related Relief* entered in the Cases on November 2, 2021 [D.I. 30], ¶¶ 2 and 6.

III. Mezzanine Borrowers Have Only Indirect Equity Interests in Park Avenue Owner and Lack Any Direct Ownership Interest in Park Avenue Owner’s Assets.

18. The “upstream” equity interests in the Park Avenue Owner are held by (i) the Mezz A Borrower, which holds the sole membership interest in the Park Avenue Owner (that membership interest, the **“Park Avenue Owner Equity”**); (ii) the Mezz B Borrower, which holds the sole membership interest in the Mezz A Borrower (that membership interest, the **“Mezz A Borrower Equity”**); and (iii) the Mezz C Borrower, which holds the sole membership interest in the Mezz B Borrower (that membership interest, the **“Mezz B Borrower Equity”**). Equity Interest Holders List, ¶¶ 2-4, 14-16; First Day Declaration, ¶¶ 27, 30; and Mezzanine Borrower Schedules, Pt. 4.

¹⁵ Referred to as the Loan Documents in the West Madison Final Cash Collateral Order.

¹⁶ While no factual matters are put at issue before the Court by this Limited Objection, if any factual matters with respect to the West Madison Mortgage Loan Agreement or the other West Madison Mortgage Loan Documents at any time become at issue, the West Madison Trustee will, to the extent necessary, seek to have those documents admitted into evidence.

19. No Mezzanine Borrower has any direct interest in any asset of the Park Avenue Owner, whether 245 Park Avenue, the Park Avenue Rents, the Park Avenue Reserves, or otherwise. First Day Declaration, ¶ 27; and Mezzanine Borrower Schedules, *passim*. Accordingly, the interests of each Mezzanine Borrower in the assets of the Park Avenue Owner are entirely indirect and derive solely from the Mezz A Borrower holding the Park Avenue Owner Equity, the Mezz B Borrower in turn holding the Mezz A Borrower Equity, and the Mezz C Borrower in turn holding the Mezz B Borrower Equity.

IV. Mezzanine Borrowers Lack Any Direct or Indirect Interests in West Madison Owner or Its Assets.

20. No Mezzanine Borrower has any interest at all—direct or indirect—in any asset of the West Madison Owner, whether 181 West Madison, the West Madison Rents, the West Madison Reserves, or otherwise, or in the West Madison Owner itself. *Id.*

V. Mezzanine Lenders (i) Are Not Creditors of Either Owner ; (ii) Have Security Interests Only in Equity Interests in Park Avenue Owner, Mezz A Borrower, and Mezz B Borrower, and (iii) Lack Any Security Interest in Either Owner’s Assets.

21. No Mezzanine Lender is or claims to be a creditor of the Park Avenue Owner, and none of them asserts any direct interest, for security or otherwise, in any property of the Park Avenue Owner’s estate—not in 245 Park Avenue, not in the Park Avenue Rents, and not in any other Park Avenue Owner’s estate property. Park Avenue Owner Schedules, *passim*; First Day Declaration, ¶ 39; Mezz A Motion, ¶ 4; Mezz B Motion, ¶ 1; Mezz C Motion, ¶ 4; and Meritz Motion, ¶ 6¹⁷. Each Mezzanine Lender asserts that its interests in the assets of the Park Avenue Owner are entirely indirect and derive entirely from, respectively, the Mezz A Lenders having a security interest in the Mezz A Borrower’s Park Avenue Owner Equity, the Mezz B Lenders having a security interest in the Mezz B Borrower’s Mezz A Borrower Equity, and the Mezz C

¹⁷ The Meritz Motion specifically acknowledges, in this paragraph, that “[t]he Mezzanine Loans are not secured by 245 Park Avenue or any of the other collateral securing the 245 Park Avenue Mortgage Loan.” The Mezz A Lenders, the Mezz B Lenders, and SLG Lender (one of the Mezz C Lenders) have all joined the Meritz Motion.

Lenders having a security interest in the Mezz C Borrower's Mezz B Borrower Equity. Motions, *passim*.

22. No Mezzanine Lender is or claims to be a creditor of the West Madison Owner or asserts any interest at all—whether direct or indirect and whether for security or otherwise—in any property of the West Madison Owner's estate—not in 181 West Madison, not in the West Madison Rents, and not in any other West Madison Owner's estate property. West Madison Owner Schedules, *passim*; and Motions, *passim*. Nor does any Mezzanine Lender assert any interest at all—whether direct or indirect and whether for security or otherwise—in the West Madison Owner itself. Motions, *passim*.

VI. No Mezzanine Borrowers Have Any Cash—Only Owners Have Cash.

23. The Mezzanine Borrowers have no cash. PWM January MOR, *passim*; and Mezzanine Borrower MORs, p. 2. Only the Park Avenue Owner and the West Madison Owner have any cash. PWM January MOR, *passim*; Park Avenue Owner January MOR, p. 2; and West Madison Owner MOR, p. 2. That cash consists of the following:

- The Park Avenue Rents and the Park Avenue Reserves, all of which are (i) property of the Park Avenue Owner; (ii) subject to the senior security interests of the Park Avenue Trustee under the Park Avenue Mortgage Loan Documents or the Park Avenue Final Cash Collateral Order; and (iii) Cash Collateral (as defined in that order) of the Park Avenue Trustee; and
- The West Madison Rents, the West Madison Reserves, and, possibly a relatively small amount of cash held by the West Madison Owner that may not have been encumbered on the Petition Date, all of which are (i) property of the West Madison Owner; (ii) subject to the security interests of the West Madison Trustee under the West Madison Mortgage Loan documents or the West Madison Final Cash Collateral Order; and (iii) Cash Collateral (as defined in that order) of the West Madison Trustee.

24. The claim made in the Mezz A Motion and the Mezz C Motion that “[t]he Debtors have unrestricted cash of no less than \$38 million” (Mezz A Motion, ¶35; and Mezz C Motion, ¶ 33) is not true: The Debtors not having been substantively consolidated, they, collectively, do not have this cash—the Park Avenue Owner has a portion of it, the West Madison Owner has the

balance of it, and the Mezzanine Borrowers have none of it or any interest therein. That cash is also not “unrestricted”: It is all Cash Collateral subject to the Final Cash Collateral Orders and none of it may be used or distributed other in accordance with those orders and the Bankruptcy Code. Global Notes, note 2.b; and Balance Sheet, note 1¹⁸.

VII. Final Cash Collateral Orders Bar Use of Cash Collateral of Either Owner to Pay Mezzanine Loan Payments.

25. With respect to that cash, each of the Final Cash Collateral Orders prohibits the use of the Cash Collateral subject thereto to pay Mezzanine Loan Payments in two basic ways.

26. First, each Final Cash Collateral Order permits the use of the Cash Collateral subject thereto only—

... to pay, in the ordinary course of the [respective] Owner’s business and in connection with [that] Owner’s Case and the other Cases—

- a. The ordinary, reasonable, and actual costs and expenses of operating [that Owner’s real property];
- b. The ordinary, reasonable, and actual costs and expenses of administering [that] Owner’s Case and the other Cases to the extent of [that Owner’s] Shared Administrative Expenses Share (defined [therein])¹⁹; and
- c. The Mortgage Loan Amounts (defined [therein])²⁰.”

Final Cash Collateral Orders, ¶¶ 4.

27. Second, each Final Cash Collateral Order expressly prohibits the use of the Cash Collateral subject thereto “[f]or payment of **any dividends, distributions, withdrawals, or other similar equity or capital payments to or for the benefit of any other Debtor** or any shareholder, member, partner, affiliate, or insider of”, respectively, the Park Avenue Owner or the West

¹⁸ Each note: “Cash is classified as unrestricted for accounting purposes but it is encumbered by the mortgage lender and any use of such cash is limited by the terms and budgets of the Cash Collateral Orders [Docket Nos. 240 & 241].”

¹⁹ Each of those Shared Administrative Expenses Shares is limited to a fixed percentage of Shared Administrative Expenses, being the Statutory Case Fees, Delaware filing fees, and allowed fees and expenses of jointly retained Debtor Professionals and any jointly compensated Committee Professionals (all as defined in each Final Cash Collateral Order).

²⁰ The Mortgage Loan Amounts being the amounts of interest only, non-default debt service, reserves, and fees and ancillary expenses required to be paid only to each Trustee in connection with the respective Mortgage Loan Documents for the Mortgage Loan held by that Trustee.

Madison Owner (such dividends, *etc.*, generically, “**Upstream Equity Distributions**”). Final Cash Collateral Orders, ¶¶ 8.a (Emphasis added).

VIII. Intercreditor Agreement Subordinates Mezzanine Loans and Rights to Park Avenue Mortgage Loan and Rights and Bars Mezzanine Lenders from Being Paid on or on Account of Mezzanine Loans until Park Avenue Mortgage Loan Is Paid in Full.

28. Simultaneously with the Park Avenue Mortgage Loan and the three Mezzanine Loans, the five original lenders for all those loans—JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NATIXIS REAL ESTATE CAPITAL LLC, SOCIÉTÉ GÉNÉRALE, DEUTSCHE BANK AG, NEW YORK BRANCH, and BARCLAYS BANK PLC (collectively, the “**Original Lenders**”)—entered into the Intercreditor Agreement as (i) the “Senior Lender” (the lender with respect to the Park Avenue Mortgage Loan); (ii) the “Mezzanine A Lender”; (iii) the “Mezzanine B Lender”; and (iv) the “Mezzanine C Lender”. Records Declaration, ¶ 7 and Exhibit 1 thereto; Mezz A Motion, ¶ 38; Mezz B Motion, ¶ 4; Mezz C Motion, ¶ 36; and Meritz Motion, ¶ 4.

29. The Original Lenders, (i) as the “Senior Lender” under the Intercreditor Agreement, are the predecessors in interest to the Park Avenue Trustee and the holders of the Companion Loans that it administers as to the Park Avenue Mortgage Loan; (ii) as the “Mezzanine A Lender” thereunder, are the predecessors in interest to the Mezz A Lenders; (iii) as the “Mezzanine B Lender” thereunder, are the predecessors in interest to the Mezz B Lenders; and (iv) as the “Mezzanine C Lender” thereunder, are the predecessors in interest to the Mezz C Lenders. Records Declaration, ¶ 7; Mezz A Motion, ¶ 3; Mezz B Motion, first paragraph; Mezz C Motion, ¶ 3; and Meritz Motion, ¶ 4.

30. In the Intercreditor Agreement, the Original Lenders describe themselves and their respective decisions to enter into it as follows:

Senior Lender and Junior Lenders²¹ are each sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior

²¹ Under the Intercreditor Agreement, the “Junior Lenders” are the Mezzanine Lenders. Intercreditor Agreement, § 1.

Loan²² and the applicable Junior Loans²³ is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents²⁴ and the Junior Loan Documents²⁵ and such other matters, materials and market conditions and criteria which each of Senior Lender and Junior Lenders deem relevant.

Intercreditor Agreement, § 18(p)(i) (Emphasis added).

31. In the Intercreditor Agreement, the Original Lenders acknowledge, in all their respective capacities, the separateness of the loans they are making and the lack of complete alignments of their respective interests with respect to those loans as follows:

Each of Senior Lender and each of the Junior Lenders acknowledges that **the Senior Loan, the Senior Loan Documents, each of the Junior Loans, and each of the Junior Loan Documents are distinct, separate transactions and loans, separate and apart from each other.** Each of Senior Lender and each of the Junior Lenders acknowledges that **each other party hereto is a distinct separate lender or investor with distinct and separate loans with various rights and remedies with respect to the Premises and the applicable Separate Collateral which are not in all respects aligned.**

Intercreditor Agreement, § 18(p)(ii) (Emphasis added).

32. By plain, unambiguous terms of the Intercreditor Agreement, these substantial, self-described sophisticated financial institutions, all represented collectively in their various lender capacities by the sophisticated law firm CADWALADER, WICKERSHAM & TAFT, LLP²⁶, agreed between themselves in their various capacities, *inter alia*, on the complete subordination of the Mezzanine Loans, the Mezzanine Loan Documents, the liens and security interests created thereby, and all Mezzanine Lenders' rights to payment in respect thereof to the Park Avenue Mortgage Loan, the Park Avenue Mortgage Loan Documents, the liens and security interests

²² Under the Intercreditor Agreement, the "Senior Loan" is the Park Avenue Mortgage Loan. Intercreditor Agreement, first recital.

²³ Under the Intercreditor Agreement, the "Junior Loans" are the Mezzanine Loans. § 1.

²⁴ Under the Intercreditor Agreement, the "Senior Loan Documents" are the Park Avenue Mortgage Loan Documents. *Id.*

²⁵ Under the Intercreditor Agreement, the "Junior Loan Documents" are the Mezzanine Loan Documents. *Id.*

²⁶ Intercreditor Agreement, § 18(a) [notice provision whereby that firm is to receive copies of notices to the Original Lenders in each of their respective lender capacities thereunder].

created thereby, and the Park Avenue Trustee's rights to payment in respect thereof, and on various related matters, all as set out in the following paragraphs.

33. Section 18(e) of the Intercreditor Agreement expressly provides that the agreement is binding on and inures to the benefit of the successors and assigns of the Original Lenders in all of their various lender capacities thereunder. Intercreditor Agreement, § 18(e).

34. Section 18(g) of the Intercreditor Agreement expressly provides that it is to be "governed by, and construed in accordance, with the internal law of the State of New York applicable to agreements intended to be wholly performed within the State of New York." Intercreditor Agreement, § 18(g).

35. Section 9 of the Intercreditor Agreement provides for the aforementioned subordination of the Mezzanine Loans and related documents, security interests, and rights to the Park Avenue Mortgage Loan and related documents, security interests, and rights, in relevant part, as follows:

Section 9. SUBORDINATION OF JUNIOR LOANS AND JUNIOR LOAN DOCUMENTS.

Except as otherwise provided in this Agreement, ... **each Junior Lender hereby subordinates and makes junior the Junior Loan held by such Junior Lender, the related Junior Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (a) the Senior Loan ..., (b) the liens and security interests created by the Senior Loan Documents ..., and (c) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents....**

Intercreditor Agreement, § 9 (Emphasis added).

36. Sections 10(a) and (b) of the Intercreditor Agreement provide for payment subordination with respect to the Mezzanine Loans as to the Park Avenue Mortgage Loan, in relevant part, as follows, with the first section (10(a)) being a general one and the second section (10(b)) being one with specific applicability to the Park Avenue Owner being a debtor in a bankruptcy case:

Section 10. PAYMENT SUBORDINATION.

(a) Except ... as otherwise expressly provided in this Agreement, ... (i) **all of such Junior Lender's rights to payment of the Junior**

Loan held by such Junior Lender and the obligations evidenced by the related Junior Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by the Borrower Parties²⁷ of the Senior Loan and the obligations secured by the Senior Loan Documents; ..., and such Junior Lender shall not, from and after receipt by such Junior Lender of written notice of the declaration of, and thereafter, during the continuance of, a Continuing Event of Default under the Senior Loan Documents²⁸ ..., accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from any Borrower Party, [or] the Premises²⁹ ... prior to the date that all obligations of Borrower³⁰ to Senior Lender under the Senior Loan Documents ... are paid in full in cash (other than (a) payments with respect to a Junior Lender's Separate Collateral³¹, including the proceeds of any enforcement, sale or liquidation of a Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement, ... and the Junior Lender receiving such payment may retain such payments).

(b) If a Proceeding³² of a Borrower Party shall have occurred and has not been dismissed or there shall have occurred and be a Continuing Event of Default under the Senior Loan Documents, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender under the Senior Loan Documents before any Junior Lender is entitled to receive any payment on account of any Junior Loan (other than (a) payments with respect to a Junior Lender's Separate Collateral, including the proceeds of any enforcement, sale or liquidation of a Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement ...) and no Junior Lender shall accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from any Borrower Party or from the Premises or other collateral securing the Senior Loan prior to the date that all obligations of the Borrower Parties to Senior

²⁷ Under the Intercreditor Agreement, the "Borrower Parties" are the Park Avenue Owner and any consolidated entity that includes that Owner. Intercreditor Agreement, § 1.

²⁸ Under the Intercreditor Agreement, a "Continuing Event of Default under the Senior Loan Documents" means any "Event of Default" as defined in the Park Avenue Loan Documents. Intercreditor Agreement, § 1.

²⁹ Under the Intercreditor Agreement, the "Premises" are, broadly, 245 Park Avenue. Intercreditor Agreement, first recital.

³⁰ Under the Intercreditor Agreement, the "Borrower" is the Park Avenue Owner. *Id.*

³¹ Under the Intercreditor Agreement, "Separate Collateral" with respect to a Junior Loan means, in relevant part, "(i) the Equity Collateral securing such Junior Loan, and (ii) any other collateral given as security for such Junior Loan pursuant to the related Junior Loan Documents, in each case not directly constituting security for the Senior Loan...."; and that "Equity Collateral" is, depending on the Junior Lender in question, the Park Avenue Owner Equity, the Mezz A Borrower Equity, or the Mezz B Borrower Equity. Intercreditor Agreement, § 1.

³² Under the Intercreditor Agreement, a "Proceeding" includes a bankruptcy case in which any Borrower Party or any Junior Borrower is a debtor; and the "Junior Borrower(s)" are the Mezzanine Borrowers. Intercreditor Agreement, §§ 11(d) and 1, respectively.

Lender under the Senior Loan Documents are paid in full in cash; provided, however, that if a Junior Lender is diligently exercising its respective cure rights pursuant to Section 12 with respect to defaults under the Senior Loan Documents, then payments may be made under the related Junior Loan ... as if the Event of Default under the Senior Loan had not occurred so long as no Proceeding of any Borrower Party shall have occurred without being dismissed.

Intercreditor Agreement, § 10(a) and (b) (Emphasis added).

37. The Intercreditor Agreement provides for a “pay-over” of and by any Mezzanine Lender that receives a payment that it is not permitted to accept or receive to the Park Avenue Trustee, in relevant part, as follows:

All payments or distributions upon or with respect to a Junior Loan which are received by a Junior Lender contrary to the provisions of this Agreement shall be received in trust for the benefit of Senior Lender ... and shall be paid over first to Senior Lender to the extent that Senior Lender is entitled thereto hereunder and under the Senior Loan Documents ... in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, as applicable, the payment or performance first of the Senior Loan in accordance with the terms of the Senior Loan Documents....

Intercreditor Agreement, § 10(b) (Emphasis added).

38. The Intercreditor Agreement provides that no Mezzanine Lender may acquire any interest in any collateral for the Park Avenue Mortgage Loan as follows:

[E]ach of the Junior Lenders agrees that, except with respect to the enforcement of its remedies under the Junior Loan Documents related to the Junior Loan held by such Junior Lender permitted hereunder, prior to the satisfaction of all Senior Loan Liabilities³³ it shall not acquire, by subrogation or otherwise (except as expressly set forth in Section 6(b) hereof), any lien, estate, right or other interest in any portion of the Premises or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

Intercreditor Agreement, § 11(c) (Emphasis added).

³³ Under the Intercreditor Agreement, the “Senior Loan Liabilities” are all indebtedness, obligations, and liabilities of the Borrower Parties under the Park Avenue Mortgage Loan Documents.

39. Finally, the Intercreditor Agreement provides that its provisions will be applicable both before and after the commencement, whether voluntary or involuntary, of any Proceeding with respect to any Borrower Party or any Junior Borrower. Intercreditor Agreement. § 11(d)(i).

40. Each of the Motions has identified the Intercreditor Agreement as being an operative agreement between, now, the Park Avenue Trustee and the Mezzanine Lenders. No Motion has disputed the effect of any provision of the Intercreditor Agreement. The Mezzanine Lenders are surely aware of the Intercreditor Agreement's payment prohibitions and pay-over requirements because each of the three adequate protection Motions directly reference and reserve the respective Mezzanine Lenders movants' rights with respect to those provisions as applicable between themselves. Mezz A Motion, ¶¶ 4, 5, 36, and 38; Mezz B Motion, ¶ 4, Mezz C Motion, ¶¶ 4, 34, and 36; and Meritz Motion, ¶ 4.

IX. Park Avenue Trustee Has Given Mezzanine Lenders Written Notice of Continuing Event of Default under Park Avenue Mortgage Loan Documents.

41. On November 12, 2021, the Park Avenue Trustee, acting through its Special Servicer, Situs, sent each of the Mezzanine Lenders a written notice that an Event of Default (as defined in the Park Avenue Mortgage Loan Agreement)—to wit: the commencement on the Petition Date of the Case in which the Park Avenue Owner is the Debtor—had occurred. Records Declaration, ¶ 14 and Exhibit 2 thereto.

ARGUMENT

42. While the factual background for this Limited Objection is facially complicated due to the multiplicity of Debtors and lenders or lender groups, the financing structures of the two Mortgage Loans and the three Mezzanine Loans, the breadth of the loan documents for those loans, and the multiplicity of relevant filings in the Cases, the grounds on which the Motions must be denied to the extent that they seek to compel either Owner to pay, directly or indirectly, the Mezzanine Loan Payments to the Mezzanine Lenders as part of the Requested Adequate Protection are **quite simple**:

- Those payments are barred by the Final Cash Collateral Orders; and
- The Intercreditor Agreement—fully enforceable in the Cases pursuant to Bankruptcy Code section 510(a)—bars the Mezzanine Lenders from receiving or accepting those payments and requires that any such payments they receive must be paid over to the Park Avenue Trustee.

I. Final Cash Collateral Orders Bar Making Mezzanine Loan Payments.

A. Final Cash Collateral Orders Fully Enforceable According to Their Respective Terms.

43. As a predicate matter, each Final Cash Collateral Order provides that it “shall take effect and **be fully enforceable** immediately upon entry [t]hereof.” Final Cash Collateral Orders, ¶¶ 3 (Emphasis added).

44. None of the Mezzanine Lenders objected to the entry of the Final Cash Collateral Orders, took any appeals from those entries, or moved to set aside or modify those orders. The Court, in any event, denied and overruled all objections and reservations of rights with respect to the Final Cash Collateral Orders³⁴, and has not stayed, vacated, amended, or supplemented either Final Cash Collateral Order. Accordingly, the Final Cash Collateral Orders remain fully enforceable as entered according to their respective terms.

45. It should be noted that, under each Final Cash Collateral Order, it would be an Automatic Termination Event (as defined in each thereof) were that order to be reversed, vacated, stayed, amended, or supplemented without the consent of the respective Trustee.

B. Payment of Mezzanine Loan Payments Not Ordinary Operating Expenses, Shared Administrative Expenses, or Mortgage Payments under Final Cash Collateral Orders.

46. As is set out in more detail in paragraph 26 above, Paragraph 4 of each Final Cash Collateral Order permits the use of the Cash Collateral subject thereto only to pay, in the ordinary course of each Owner’s business and in connection with the Cases, (i) the ordinary, reasonable,

³⁴ Final Cash Collateral Orders, ¶¶ 2.

and actual costs and expenses of operating that Owner's real property; (ii) that Owner's share of the Shared Administrative Expenses; and (iii) that Owner's Mortgage Loan Amounts.

47. Payment of the Mezzanine Loan Payments are neither costs nor expenses of operating either 245 Park Avenue or 181 West Madison, part of any Shared Administrative Expenses, nor Mortgage Loan Amounts with respect to either Owner. Further, it is **not** in the ordinary course of the Park Avenue Owner's business to pay its parent's, grandparent's, or great-grandparent's own, separate indebtedness on which the Park Avenue Owner is not liable; and it is **not** in the ordinary course of the West Madison Owner's business to pay the separate indebtedness of its affiliates that are not even in its ownership structure and on which the West Madison Owner is not liable.

48. Thus, the Final Cash Collateral Orders, by their Paragraphs 4, wholly bar the payment by the respective Owner thereunder of the Mezzanine Loan Payments sought by the Motions as those payments are not property operating expenses, Shared Administrative Expenses, or Mortgage Loan Amounts. The Motions must be denied as to the Mezzanine Loan Payments on this independent ground alone.

49. Lest there be any doubt, neither Trustee consents to the use of any of its Cash Collateral to make any Mezzanine Loan Payments.

**C. Payment of Mezzanine Loan Payments Would Be Prohibited
Equity Distributions under Final Cash Collateral Orders.**

50. As is set out in more detail in paragraph 27 above, Paragraph 8.a of each Final Cash Collateral Order expressly prohibits the use of the Cash Collateral subject thereto for payment of any Upstream Equity Distributions to or for the benefit of, *inter alia*, any Mezzanine Borrower.

51. As discussed above, (i) none of the Mezzanine Lenders is a creditor of either Owner or the holder of any interest (security or otherwise) in either Owner's property; (ii) neither Owner has been substantively consolidated with any of the Mezzanine Borrowers; and (iii) none of the Mezzanine Borrowers have any cash to make the requested Mezzanine Loan Payments. Accordingly, the only two possible ways in which the Mezzanine Borrowers could make the

Mezzanine Loan Payments on account of the Mezzanine Loans on which only they are indebted would be through prohibited Upstream Equity Distributions as follows:

(a) The Park Avenue Owner would have to pay prohibited Upstream Equity Distributions on the Park Avenue Owner Equity to the Mezz A Borrower sufficient to permit the Mezz A Borrower to pay both (i) the Mezzanine Loan Payments with respect to the Mezz A Loan; and (ii) further Upstream Equity Distributions on the Mezz A Borrower Equity to the Mezz B Borrower sufficient to permit the Mezz B Borrower to pay both (A) the Mezzanine Loan Payments with respect to the Mezz B Loan; and (B) further Upstream Equity Distributions on the Mezz B Borrower Equity to the Mezz C Borrower sufficient to permit the Mezz C Borrower to pay the Mezzanine Loan Payments with respect to the Mezz C Loan; or

(b) The West Madison Owner would have to pay prohibited Upstream Equity Distributions to its sole member, Debtor 181 WEST MADISON HOLDING LLC, sufficient to cover all the Mezzanine Loan Payments. Those amounts, in turn, would have to be paid as successive Upstream Equity Distributions, through a **non-debtor**, to Debtor PWM, *i.e.*, the “top of the capital stack” Debtor; and then PWM would have to make and cause to be made successive “downstream” capital contributions thereof through four **non-debtors** and then through two Debtors to the Mezz C Borrower (it keeping a portion thereof), the Mezz B Borrower (it keeping a portion thereof as well), and the Mezz A Borrower.

52. The foregoing theoretical scenarios demonstrate the Final Cash Collateral Orders’ prohibition against the Motions’ request that “the Debtors” make the Mezzanine Loan Payments to the Mezzanine Lenders, and the impermissibility thereof as well.

53. The Final Cash Collateral Orders, by their Paragraphs 8.a, also wholly bar the payment by the respective Owner thereunder of the Mezzanine Loan Payments sought by the Motions as prohibited Upstream Equity Distributions. The Motions must be denied as to the Mezzanine Loan Payments on this independent ground alone. The Motions must thus be denied as to the Mezzanine Loan Payments on both grounds on which the Final Cash Collateral Orders independently prohibit the requested payments by or from either Owner.

II. Intercreditor Agreement Bars Requested Mezzanine Loan Payments.

54. Even were the Final Cash Collateral Orders not fatal to the Motions' request for the Mezzanine Loan Payments, the Intercreditor Agreement surely is.

A. Intercreditor Agreements Are Fully Enforceable in Bankruptcy Cases.

55. Bankruptcy Code section 510(a) provides as follows:

A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.

Bankr. C. § 510(a).

56. The Intercreditor Agreement is indisputably, by its plain and unambiguous language, a subordination agreement. As set out in detail in Part VIII of the Facts section above (Paragraphs 28 through 39 above), by that agreement, the Mezzanine Loans and related documents, security interests, and rights have been clearly and expressly subordinated to the Park Avenue Mortgage Loan and related documents, security interests, and rights, and that subordination is both a payment subordination and a lien subordination. Hence, as the Intercreditor Agreement is fully enforceable under applicable nonbankruptcy law, it is fully enforceable in the Cases by the Park Avenue Trustee against the Mezzanine Lenders.

B. Intercreditor Agreement Enforceable under Applicable Nonbankruptcy Law: Law of New York.

57. As is set out in paragraph 34 above, the Intercreditor Agreement is to be governed by and construed in accordance with the internal laws of the State of New York. New York law has long fully enforced subordination agreements according to their terms:

[U]nder New York law, when a contractual subordination agreement is unambiguous, the parties' rights are governed exclusively by that agreement and the words of that agreement are given their plain, ordinary and usual meaning. *Hong Kong Export Credit, Inc. v. Dun & Bradstreet*, 414 F.Supp. 153, 158 (S.D.N.Y.1975); *Johnson v. Colter*, 251 A.D. 697, 297 N.Y.S. 345 (4th Dep't 1937); *accord In re Envirodyne Industries, Inc.*, 161 B.R. 440, 445 (Bankr.N.D.Ill.1993) (applying New York law).

In re Best Products Co., Inc., 168 B.R. 35, 69 (Bankr. S.D.N.Y. 1994).

58. Then-Chief Judge of this Court, Judge Christopher S. Sontchi, was in complete accord with the full enforceability of subordination agreements under New York law in *In re La Paloma Generating Company*, 595 B.R. 466 (Bankr. D. Del. 2018) (“*La Paloma*”), *aff’d* 609 B.R. 80 (D. Del. 2019), where, citing that law and enforcing the intercreditor agreement before the Court, he said the following:

When interpreting a contract under New York law, the “primary objective is to give effect to the intent of the parties as revealed by the language of their agreement. The words and phrases in a contract should be given their plain meaning, and the contract should be construed so as to give full meaning and effect to all of its provisions.

La Paloma, *supra*, 595 B.R. at 475.

C. Intercreditor Agreement Is Fully Enforceable Here under Bankruptcy Code Section 510(a).

59. As it is fully enforceable under its applicable nonbankruptcy law—the law of New York—the Intercreditor Agreement is enforceable in the Cases under Bankruptcy Code section 510(a). The Bankruptcy Court for the Southern District of New York explained the importance of the strict enforcement of subordination agreements in bankruptcy cases, particularly those made, as here, by sophisticated parties, in *Ion Media Networks, Inc. v. Cyrus Select Opportunities Master Fund Ltd. (In re Ion Media Networks, Inc.)*, 419 B.R. 585 (Bankr. S.D.N.Y. 2009) (“*Ion Media*”), as follows:

Giving effect to the plain language of the Intercreditor Agreement in this manner also reinforces general principles of public policy. Affirming the legal efficacy of unambiguous intercreditor agreements leads to more predictable and efficient commercial outcomes and minimizes the potential for wasteful and vexatious litigation. The sophisticated parties who entered into the Intercreditor Agreement were certainly aware of the nature of Ion’s business and the well-known restrictions and limitations applicable to security interests in FCC Licenses. This reality adds credence to the notion that the parties fully intended to place the Second Lien Lenders in an indisputably subordinate position and to prevent interference with the stipulated senior rights of the First Lien Lenders.

.... The Court concludes that the Intercreditor Agreement is strictly enforceable in accordance with its terms. Moreover, plainly worded contracts establishing priorities and limiting obstructionist, destabilizing and wasteful behavior should be enforced and creditor expectations should be appropriately fulfilled. The Intercreditor Agreement is an enforceable contract under section 510(a), and the

Court will not disturb the bargained-for rights and restrictions governing the second lien debt currently held by Cyrus.

Ion Media, supra, 419 B.R. at 595.

60. In *La Paloma*, Judge Sontchi reiterated that importance, discussing *Ion Media* and quoting that first cited paragraph above, in enforcing the intercreditor agreement before him, as follows:

Here, the Court too finds that reading of the Intercreditor Agreement in its entirety leads to the same result [as in *Ion Media*]. Sophisticated parties negotiated and entered into this Intercreditor Agreement with the intention to subordinate the Second-Lien Lenders to the liens of the First-Lien Lenders.

La Paloma, supra, 595 B.R. at 477.

D. Intercreditor Agreement Plainly and Unambiguously Fully Subordinates Mezzanine Loans, Liens, and Payment Rights to Park Avenue Mortgage Loan, Liens, and Payment Rights.

61. The Intercreditor Agreement is strictly enforceable in the Cases under Bankruptcy Code section 510(a) by its plain and unambiguous language. See Paragraph 35 above. It Intercreditor Agreement completely subordinates the Mezzanine Loans, the Mezzanine Loan Documents, the liens and security interests created thereby, and all the Mezzanine Lenders' rights to payment in respect thereof to the Park Avenue Mortgage Loan, the Park Avenue Mortgage Loan Documents, the liens and security interests created thereby, and the Park Avenue Trustee's rights to payment in respect thereof.

62. Further, by its strictly enforceable, plain, and unambiguous language, the Intercreditor Agreement provides (i) a complete payment subordination, both generally and specifically in connection with the Cases, on the Mezzanine Lenders in favor of the Park Avenue Trustee until the Park Avenue Mortgage Loan has been paid in full with respect to any payments on account of the Mezzanine Loans from any Borrower Party or any Park Avenue Mortgage Loan Collateral, which includes the Park Avenue Rents and the Park Avenue Trustee's other Cash Collateral; (ii) prohibits the Mezzanine Lenders from accepting or receiving any such payments;

and (iii) requires that any such payments received by any of them be received in trust for the benefit of the Park Avenue Trustee and paid over to it. See Paragraphs 36 and 37 above.

63. In *La Paloma*, Judge Sontchi expressly approved and enforced payment subordination and pay-over provisions in the intercreditor agreement before him that were substantively the same as the provisions to that effect in the Intercreditor Agreement just noted above:

Even though the Second-Lien Lenders have not actually received any monies to “pay over,” if they did, Section 4.2 of the Intercreditor Agreement would require that such monies be “paid over” to the First-Lien Lenders. Thus, Section 4.2 of the Intercreditor Agreement dictates if the Second-Lien Lenders do collect monies from Plan distributions, collected as a result of exercising their remedies under the Intercreditor Agreement, that such funds must be “paid over” to the First-Lien Lenders.

....

As a result, the Court will enforce Section 4.1 of the Intercreditor Agreement and require that the First-Lien Claim receive payment in full prior to payment of the Second-Lien Claim.

La Paloma, *supra*, 595 B.R. at 475, 477.

64. As (i) the Debtors have not been substantively consolidated; (ii) the Mezzanine Borrowers have no cash; (iii) the Mezzanine Lenders do not even have an indirect interest of any sort in the West Madison Owner; and (iv) any upstreaming and then down-streaming of funds from the West Madison Owner to the Mezzanine Borrowers as set out in Paragraph 51(b) above would obviously be impermissible, the only source of the Mezzanine Loan Payments requested by the Mezzanine Lenders is the Park Avenue Mortgage Loan Collateral: 245 Park Avenue itself, the Park Avenue Rents it generates, and the Park Avenue Reserves held in respect of that loan. Plainly, under the above cited, fully enforceable, plain, and unambiguous provisions of the Intercreditor Agreement, the Mezzanine Lenders are not permitted to accept or receive any payments from these sources until the Park Avenue Mortgage Loan has been paid in full, and, if they do, they must pay those amounts over to the Park Avenue Trustee.

65. Finally, obtaining the relief they seek by the Motions to have the Mezzanine Loan Payments made to them from the Park Avenue Mortgage Loan Collateral would violate the strictly

enforceable, plain, and unambiguous language of the Intercreditor Agreement set out in Paragraph 38 above that prohibits the Mezzanine Lenders from acquiring, in any way, prior to payment in full of the Park Avenue Mortgage Loan, any “interest” of any kind in any of that collateral.

66. The Mezzanine Loan Payment request made by the Motions is, by virtue of the Intercreditor Agreement, prohibited. This is doubly true because, as noted above, the Mezzanine Lenders have, in various parts of certain of the Motions, raised for their own respective protections against each other the payments bar and pay-over provisions of the Intercreditor Agreement applicable to them that parallel the payments bar and pay-over provisions therein that protect the Park Avenue Trustee. The Mezzanine Lenders cannot have been unaware of the Intercreditor Agreement provisions discussed above and their complete bar to the Mezzanine Loan Payments they have requested by the Motions in the present context.

67. The Motions must be denied as to the Mezzanine Loan Payments they seek on the grounds that the Intercreditor Agreement prohibits those payments from being accepted or received by the Mezzanine Lender and requires that they pay any of those payments that they might receive over to the Park Avenue Trustee.

CONCLUSION

68. For the reasons set forth above, the Motions must be denied to the extent they seek to compel either Owner to pay, directly or indirectly, the Mezzanine Loan Payments to the Mezzanine Lenders on any ground.

RESERVATION OF RIGHTS

69. The 245 Park Trustee reserves all its rights under the Intercreditor Agreement with respect to each Mezzanine Lender, including with respect to (i) receipt or acceptance of any payments by any Mezzanine Lender in violation thereof; and (ii) whether any Mezzanine Lender has breached that agreement by having made or joined in any Motion.

FINAL ORDERS STATEMENT

70. Pursuant to Local Rule 9013-1(h), the Trustees do not consent to the entry of a final order or judgment with respect to the Motions by the Court if it is determined that the Court, absent consent of all the parties affected, cannot enter a final order or judgment with respect to the Motions consistent with Article III of the United States Constitution.

Dated: February 23, 2022
Wilmington, Delaware

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West Madison Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PWM PROPERTY MANAGEMENT LLC, *et al.*¹,
Debtors.

Chapter 11

Case No. 21-11445 (MFW)
(Jointly Administered)

Re: Docket Nos. 384, 385, 387, and 401 (Motions),
and 395, 396, and 400 (Joinders)

Hearing:
March 9, 2022, at 10:30 a.m. (E.T.)

Objection Deadline:
February 23, 2022, at 4:00 p.m. (E.T.)

**DECLARATION OF ROBERT E. RECORDS IN SUPPORT OF
WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE,
AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS
TRUSTEE, TO MEZZANINE LENDERS' MOTIONS FOR ADEQUATE
PROTECTION AND RELIEF FROM STAY [D.I. 384, 385, 387, AND 401]**

I, ROBERT E. RECORDS, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury:

1. I am employed by SITUS HOLDINGS, LLC (“Situs”), in the Dallas-Fort Worth Metroplex, Texas. If called upon to testify as to the facts set forth in this Declaration, I could and would competently testify thereto since the facts herein set forth are personally known to me to be true, except as to those matters that I state on information of belief, and as to those matters, I believe them to be true. My knowledge of the facts set forth in this Declaration arises from the fact that I am a Director – Special Servicing of Situs, which is one of the entities responsible for the

¹ The debtors in these chapter 11 cases (collectively, the “Cases”), along with the last four digits of each debtor’s federal tax identification number, are PWM Property Management LLC (2514); 245 Park Avenue Property LLC (9531); HNA 245 Park Ave JV LLC (5043); 245 Park JV LLC (2417); 245 Park Avenue Mezz C LLC (5276); 245 Park Avenue Mezz B LLC (4961); 245 Park Avenue Mezz A LLC (4673); 181 West Madison Holding LLC (2346); and 181 West Madison Property LLC (3759). The debtors’ service address for purposes of these cases is 245 Park Avenue, Floor 40, New York, New York 10167.

administration and servicing the Park Avenue Mortgage Loan made to the Park Avenue Owner, one of the Debtors in the Cases. Situs is the Special Servicer for WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF 245 PARK AVENUE TRUST 2017-245P, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2017-245P, on behalf of itself and holders of related Companion Loans (in that capacity, the **“Park Avenue Trustee”**), and is authorized to act on behalf of the Park Avenue Trustee.²

2. I am one of the custodians of the books, records, files, and credit records of the Park Avenue Trustee and Situs as those books, records, files, and credit records pertain to the Park Avenue Mortgage Loan and extensions of credit made by the Park Avenue Trustee’s predecessor in interest to the Park Avenue Owner and that are the subject of this Declaration. I have personally worked on the those books, records, files, and credit records and, as to the following facts, I know them to be true of my own knowledge or have gained knowledge of them from the business records of the Park Avenue Trustee and Situs, which records are maintained in the ordinary course of the Park Avenue Trustee’s and Situs’s businesses.

3. The records of the Park Avenue Trustee and Situs as they pertain to the Park Avenue Mortgage Loan and the extensions of credit that are the subject matter of this Declaration are kept in the regular course of the Park Avenue Trustee’s and Situs’s businesses. The records are carefully prepared to reflect all acts, conditions, and events at or near the time those acts, conditions, or events occurred and the entries made therein are made by persons who have knowledge of the facts or have a business duty to maintain those records. Based on my personal knowledge and experience, I know that these records are accurate and trustworthy.

PARK AVENUE MORTGAGE LOAN

4. The Park Avenue Mortgage Loan is a \$1.2 billion principal amount mortgage loan made by JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NATIXIS REAL ESTATE CAPITAL

² All capitalized terms not used but not otherwise defined in this Declaration have the meaning given to those terms, directly or by reference, in, or as used in, the *Declaration of Mohsin Y. Meghji, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* filed in the Cases [D.I. 9].

LLC, SOCIÉTÉ GÉNÉRALE, DEUTSCHE BANK AG, NEW YORK BRANCH, and BARCLAYS BANK PLC (collectively, the “**Original Lenders**”) on or about May 5, 2017 (the “**Origination Date**”), to the Park Avenue Owner.

5. The Park Avenue Mortgage Loan is governed and secured by the *Loan Agreement* dated as of the Origination Date (the “**Park Avenue Mortgage Loan Agreement**”), the *Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing* dated as of the Origination Date (the “**Park Avenue Mortgage**”), and the other Loan Documents (as defined in the Park Avenue Loan Agreement) (the Park Avenue Loan Agreement, the Park Avenue Mortgage, and the other Loan Documents, collectively, the “**Park Avenue Loan Documents**”). The collateral for the Park Avenue Mortgage Loan is all the assets of the Park Avenue Owner, including 245 Park Avenue, all the Rents (as defined in the Park Avenue Mortgage Loan Agreement) (those Rents, the “**Park Avenue Rents**”), and all the reserves held by or for the benefit of the Park Avenue Trustee under the Park Avenue Mortgage Loan Documents, all of which are funded from the Park Avenue Rents.

6. The Park Avenue Trustee is the holder of certain of the Note(s) (as defined in the Park Avenue Loan Agreement), the administrator of the holders of the others of the Note(s) (which are the Companion Loans), and the assignee of the Park Avenue Mortgage Loan Agreement, the Park Avenue Mortgage, and the other Park Avenue Mortgage Loan Documents.

INTERCREDITOR AGREEMENT

7. In connection with the making of the Park Avenue Mortgage Loan, the Original Lenders, as, respectively, the “Senior Lender”, the “Mezzanine A Lender”, the “Mezzanine B Lender”, and the “Mezzanine C Lender” (those mezzanine lenders, collectively the “**Mezzanine Lenders**”, and referred to therein, collectively, as the “Junior Lenders”) executed the *Intercreditor Agreement* dated as of the Origination Date (the “**Intercreditor Agreement**”), a true and correct copy of which is attached hereto as Exhibit 1. The Park Avenue Trustee is the assignee of the

Intercreditor Agreement with respect to the Park Avenue Mortgage Loan and the rights of the “Senior Lender” thereunder.

8. This declarant respectfully directs the Court’s attention to Section 18(p)(i) of the Intercreditor Agreement, which provides, in part, as follows:

Senior Lender and Junior Lenders are each sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the applicable Junior Loans is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Junior Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Junior Lenders deem relevant. (Emphasis added.)

9. This declarant respectfully directs the Court’s attention to Section 18(p)(ii) of the Intercreditor Agreement, which provides as follows:

Each of Senior Lender and each of the Junior Lenders acknowledges that **the Senior Loan, the Senior Loan Documents, each of the Junior Loans, and each of the Junior Loan Documents are distinct, separate transactions and loans, separate and apart from each other.** Each of Senior Lender and each of the Junior Lenders acknowledges that **each other party hereto is a distinct separate lender or investor with distinct and separate loans with various rights and remedies with respect to the Premises and the applicable Separate Collateral which are not in all respects aligned.** (Emphasis added.)

10. This declarant respectfully directs the Court’s attention to Section 9 of the Intercreditor Agreement, which provides, in part, as follows:

Section 9. SUBORDINATION OF JUNIOR LOANS AND JUNIOR LOAN DOCUMENTS.

Except as otherwise provided in this Agreement, including, without limitation, Section 6(b) hereof, **each Junior Lender hereby subordinates and makes junior the Junior Loan held by such Junior Lender, the related Junior Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (a) the Senior Loan and each Senior Junior Loan, (b) the liens and security interests created by the Senior Loan Documents and the Senior Junior Loan Documents, and (c) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents and the Senior Junior Loan Documents....** (Emphasis added.)

11. This declarant respectfully directs the Court's attention to Sections 10(a) and (b) of the Intercreditor Agreement, which provide, in part, as follows:

Section 10. PAYMENT SUBORDINATION.

(a) Except (1) as otherwise expressly provided in this Agreement, including, without limitation, Section 6(b) hereof, or (2) in connection with the exercise by a Junior Lender of its rights and remedies with respect to the Separate Collateral and the application of the proceeds therefrom (in accordance with this Agreement, including the proceeds from any sale of such Junior Lender's interest in the related Junior Loan) as such Junior Lender deems appropriate in its sole discretion, (i) **all of such Junior Lender's rights to payment of the Junior Loan held by such Junior Lender and the obligations evidenced by the related Junior Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by the Borrower Parties of the Senior Loan and the obligations secured by the Senior Loan Documents;** and (ii) all of such Junior Lender's rights to payment of the Junior Loan held by such Junior Lender and the obligations evidenced by the related Junior Loan Documents are hereby subordinated to all of the rights of each Senior Junior Lender to payment by each Senior Junior Borrower of the related Senior Junior Loan and the obligations secured by the Senior Junior Loan Documents, and **such Junior Lender shall not, from and after receipt by such Junior Lender of written notice of the declaration of, and thereafter, during the continuance of, a Continuing Event of Default under the Senior Loan Documents or the Senior Junior Loan Documents, accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from any Borrower Party, the Premises, from any Senior Junior Borrower, and/or proceeds from Separate Collateral securing or guaranteeing such Senior Junior Loan prior to the date that all obligations of Borrower to Senior Lender under the Senior Loan Documents and the related Senior Junior Borrower to the related Senior Junior Lender under the Senior Junior Loan Documents are paid in full in cash (other than (a) payments with respect to a Junior Lender's Separate Collateral, including the proceeds of any enforcement, sale or liquidation of a Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement, or (b) proceeds from any Transfer of such Junior Lender's interest in the Junior Loan held by such Junior Lender in accordance with this Agreement and the Junior Lender receiving such payment may retain such payments).** (Emphasis added.)

(b) **If a Proceeding of a Borrower Party shall have occurred and has not been dismissed or there shall have occurred and be a Continuing Event of Default under the Senior Loan Documents, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender under the Senior Loan Documents before any Junior Lender is entitled to receive any payment on account of any Junior Loan (other than (a) payments with respect to a Junior Lender's Separate Collateral, including the proceeds of any enforcement, sale or liquidation of a**

Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement or, (b) proceeds from any sale in accordance with this Agreement of such Junior Lender's interest in the Junior Loan held by such Junior Lender) **and no Junior Lender shall accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from any Borrower Party or from the Premises or other collateral securing the Senior Loan prior to the date that all obligations of the Borrower Parties to Senior Lender under the Senior Loan Documents are paid in full in cash; provided, however,** that if a Junior Lender is diligently exercising its respective cure rights pursuant to Section 12 with respect to defaults under the Senior Loan Documents, then payments may be made under the related Junior Loan, as well as under any Junior Loan that is a Senior Junior Loan relative to such Junior Loan, as if the Event of Default under the Senior Loan had not occurred **so long as no Proceeding of any Borrower Party shall have occurred without being dismissed.** (Emphasis added.)

12. This declarant respectfully directs the Court's attention to a further portion of Sections 10(b) of the Intercreditor Agreement, which provides as follows:

All payments or distributions upon or with respect to a Junior Loan which are received by a Junior Lender contrary to the provisions of this Agreement shall be received in trust for the benefit of Senior Lender and each applicable Senior Junior Lender (to the extent payable to such Senior Junior Lender) **and shall be paid over first to Senior Lender to the extent that Senior Lender is entitled thereto hereunder and under the Senior Loan Documents** and then to the most senior Senior Junior Lender to the extent the same is entitled thereto hereunder and under the Senior Junior Loan Documents **in the same form as so received** (with any necessary endorsement) **to be applied (in the case of cash) to,** or held as collateral (in the case of non-cash property or securities) for, as applicable, **the payment or performance first of the Senior Loan in accordance with the terms of the Senior Loan Documents** and then the Senior Junior Loan in accordance with the terms of the Senior Junior Loan Documents. (Emphasis added.)

13. This declarant respectfully directs the Court's attention to Section 11(c) of the Intercreditor Agreement, which provides, in part, as follows:

[E]ach of the Junior Lenders agrees that, except with respect to the enforcement of its remedies under the Junior Loan Documents related to the Junior Loan held by such Junior Lender permitted hereunder, **prior to the satisfaction of all Senior Loan Liabilities it shall not acquire, by subrogation or otherwise** (except as expressly set forth in Section 6(b) hereof), **any lien, estate, right or other interest in any portion of the Premises or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.** (Emphasis added.)

**NOTICE FROM PARK AVENUE TRUSTEE TO
MEZZANINE LENDERS OF EVENT OF
DEFAULT UNDER PARK AVENUE MORTGAGE LOAN**

14. Attached hereto as Exhibit 2 is a true and correct copy of a letter dated November 12, 2021, from this declarant, on behalf of the Park Avenue Trustee, to the successors in interest to the original Mezzanine Lenders of the occurrence of a Continuing Event of Default (as defined in the Intercreditor Agreement) with respect to the Park Avenue Mortgage Loan and the Park Avenue Mortgage Loan Documents and other matters with respect to the Intercreditor Agreement that I caused to be sent on or about that date by Federal Express to the indicated recipients thereof.

[Signature on Following Page]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 22, 2022



ROBERT E. RECORDS
Declarant

EXHIBIT 1

INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT

by and among

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
NATIXIS REAL ESTATE CAPITAL LLC,
SOCIÉTÉ GÉNÉRALE,
DEUTSCHE BANK AG, NEW YORK BRANCH, and
BARCLAYS BANK PLC,**
collectively, as Senior Lender,

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
NATIXIS REAL ESTATE CAPITAL LLC,
SOCIÉTÉ GÉNÉRALE,
DEUTSCHE BANK AG, NEW YORK BRANCH, and
BARCLAYS BANK PLC,**
collectively as Mezzanine A Lender,

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
NATIXIS REAL ESTATE CAPITAL LLC,
SOCIÉTÉ GÉNÉRALE,
DEUTSCHE BANK AG, NEW YORK BRANCH, and
BARCLAYS BANK PLC,**
collectively as Mezzanine B Lender,

and

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
NATIXIS REAL ESTATE CAPITAL LLC,
SOCIÉTÉ GÉNÉRALE,
DEUTSCHE BANK AG, NEW YORK BRANCH, and
BARCLAYS BANK PLC,**
collectively as Mezzanine C Lender

Dated as of May 5, 2017

245 PARK AVENUE

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INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT**, dated as of May 5, 2017 (this “**Agreement**”), by and among **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179, **NATIXIS REAL ESTATE CAPITAL LLC**, a Delaware limited liability company having an address at 1251 Avenue of the Americas, 5th Floor, New York, New York 10020, **SOCIÉTÉ GÉNÉRALE**, a bank organized under the laws of France, having an address at 245 Park Avenue New York, NY 10167, **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank, AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, New York, New York 10005, and **BARCLAYS BANK PLC**, a public company registered in England and Wales having an address at 745 Seventh Avenue, New York, New York 10019 (together with their respective successors and assigns, collectively, “**Senior Lender**”); **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179, **NATIXIS REAL ESTATE CAPITAL LLC**, a Delaware limited liability company having an address at 1251 Avenue of the Americas, 5th Floor, New York, New York 10020, **SOCIÉTÉ GÉNÉRALE**, a bank organized under the laws of France, having an address at 245 Park Avenue New York, NY 10167, **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank, AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, New York, New York 10005, and **BARCLAYS BANK PLC**, a public company registered in England and Wales having an address at 745 Seventh Avenue, New York, New York 10019 (together with their respective successors and assigns, collectively, “**Mezzanine A Lender**”); **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179, **NATIXIS REAL ESTATE CAPITAL LLC**, a Delaware limited liability company having an address at 1251 Avenue of the Americas, 5th Floor, New York, New York 10020, **SOCIÉTÉ GÉNÉRALE**, a bank organized under the laws of France, having an address at 245 Park Avenue New York, NY 10167, **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank, AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, New York, New York 10005, and **BARCLAYS BANK PLC**, a public company registered in England and Wales having an address at 745 Seventh Avenue, New York, New York 10019 (together with their respective successors and assigns, collectively, “**Mezzanine B Lender**”); and **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179, **NATIXIS REAL ESTATE CAPITAL LLC**, a Delaware limited liability company having an address at 1251 Avenue of the Americas, 5th Floor, New York, New York 10020, **SOCIÉTÉ GÉNÉRALE**, a bank organized under the laws of France, having an address at 245 Park Avenue New York, NY 10167, **DEUTSCHE BANK AG, NEW YORK BRANCH**, a branch of Deutsche Bank, AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, New York, New York 10005, and **BARCLAYS BANK PLC**, a public company registered in England and Wales having an address at 745 Seventh Avenue, New York, New York 10019 (together with their respective

successors and assigns, collectively, “**Mezzanine C Lender**” and together with Mezzanine A Lender and Mezzanine B Lender, each a “**Junior Lender**” and, collectively, “**Junior Lenders**”).

RECITALS

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Loan Agreement, dated as of the Closing Date (as the same may be amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”), by and among 245 Park Avenue Property LLC, a Delaware limited liability company (together with its successors and permitted assigns, “**Borrower**”) and Senior Lender, Senior Lender made a loan to Borrower in the original principal amount of \$1,200,000,000.00 (the “**Senior Loan**”), which Senior Loan is evidenced by those certain promissory notes, each dated as of the Closing Date, made by Borrower to the order of the applicable Senior Lender (as each of the same may be amended, restated, replaced, split, supplemented or otherwise modified from time to time, collectively, the “**Senior Note**”), and secured by, among other things, that certain first priority Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the Closing Date, and executed and delivered by Borrower to Senior Lender (and as such term is further defined in the Senior Loan Agreement, the “**Mortgage**”), which Mortgage encumbers the real property and all improvements thereon and appurtenances thereto described in the Mortgage (together with all other collateral securing the Senior Loan, the “**Premises**”) (the Mortgage, the Senior Note and the Senior Loan Agreement, together with the instruments and documents securing the Senior Loan set forth on Exhibit A hereto, as any of the foregoing, including the instruments and documents set forth on Exhibit A hereto, may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement, collectively the “**Senior Loan Documents**”);

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine A Loan Agreement, dated as of the Closing Date, by and between 245 Park Avenue Mezz A LLC, a Delaware limited liability company (together with its successors and permitted assigns, “**Mezzanine A Borrower**”) and Mezzanine A Lender (as the same may be amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Mezzanine A Loan Agreement**”), Mezzanine A Lender made a loan to Mezzanine A Borrower in the original principal amount of \$236,500,000.00 (the “**Mezzanine A Loan**”), which Mezzanine A Loan is evidenced by those certain promissory notes, each dated as of the Closing Date, made by Mezzanine A Borrower to the order of the applicable Mezzanine A Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Mezzanine A Note**”), which Mezzanine A Loan is secured by, among other things, that certain Mezzanine A Pledge and Security Agreement, dated as of the Closing Date, from Mezzanine A Borrower pursuant to which Mezzanine A Lender is granted a first-priority security interest in all of Mezzanine A Borrower’s direct and indirect ownership interests in Borrower (as the same may be amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Mezzanine A Pledge Agreement**”), and together with all documents and instruments securing the Mezzanine A Loan set forth on Exhibit B hereto, as any of the foregoing, including the documents and instruments set forth on Exhibit B hereto, may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to

the limitations and agreements contained in this Agreement, collectively the “**Mezzanine A Loan Documents**”);

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine B Loan Agreement, dated as of the Closing Date, by and between 245 Park Avenue Mezz B LLC, a Delaware limited liability company (together with its successors and permitted assigns, “**Mezzanine B Borrower**”) and Mezzanine B Lender (as the same may be amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Mezzanine B Loan Agreement**”), Mezzanine B Lender made a loan to Mezzanine B Borrower in the original principal amount of \$221,000,000.00 (the “**Mezzanine B Loan**”), which Mezzanine B Loan is evidenced by those certain promissory notes, each dated as of the Closing Date, made by Mezzanine B Borrower in favor of Mezzanine B Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Mezzanine B Note**”), which Mezzanine B Loan is secured by, among other things, that certain Mezzanine B Pledge and Security Agreement, dated as of the Closing Date, from Mezzanine B Borrower pursuant to which Mezzanine B Lender is granted a first-priority security interest in all of Mezzanine B Borrower’s direct and indirect ownership interests in Mezzanine A Borrower (as the same may be amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Mezzanine B Pledge Agreement**”), and together with all documents and instruments securing the Mezzanine B Loan set forth on Exhibit C hereto, as any of the foregoing, including the documents and instruments set forth on Exhibit C hereto, may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement, collectively the “**Mezzanine B Loan Documents**”);

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine C Loan Agreement, dated as of the Closing Date, by and between 245 Park Avenue Mezz C LLC, a Delaware limited liability company (together with its successors and permitted assigns, “**Mezzanine C Borrower**”) and Mezzanine C Lender (as the same may be amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Mezzanine C Loan Agreement**”), Mezzanine C Lender made a loan to Mezzanine C Borrower in the original principal amount of \$110,500,000.00 (the “**Mezzanine C Loan**”), which Mezzanine C Loan is evidenced by those certain promissory notes, each dated as of the Closing Date, made by Mezzanine C Borrower in favor of Mezzanine C Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Mezzanine C Note**”), which Mezzanine C Loan is secured by, among other things, that certain Mezzanine C Pledge and Security Agreement, dated as of the Closing Date, from Mezzanine C Borrower pursuant to which Mezzanine C Lender is granted a first-priority security interest in all of Mezzanine C Borrower’s direct and indirect ownership interests in Mezzanine B Borrower (as the same may be amended, replaced, restated, supplemented or otherwise modified from time to time, the “**Mezzanine C Pledge Agreement**”), and together with all documents and instruments securing the Mezzanine C Loan set forth on Exhibit D hereto, as any of the foregoing, including the documents and instruments set forth on Exhibit D hereto, may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement, collectively the “**Mezzanine C Loan Documents**”); and

WHEREAS, Senior Lender and Junior Lenders desire to enter into this Agreement to provide for the relative priority of, and to evidence certain agreements with respect to, the Senior Loan Documents, the Mezzanine A Loan Documents, the Mezzanine B Loan Documents and the Mezzanine C Loan Documents.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Junior Lenders each hereby agree as follows:

Section 1. CERTAIN DEFINITIONS; RULES OF CONSTRUCTION.

As used in this Agreement, the following capitalized terms shall have the following meanings:

“Additional Insolvency Opinion” means (a) with respect to the Senior Loan, an “Additional Insolvency Opinion” as defined in the Senior Loan Agreement, and (b) with respect to any Junior Loan, a non-consolidation opinion letter delivered in connection with such Junior Loan subsequent to the Closing Date reasonably satisfactory in form and substance to the applicable Junior Lender, and from counsel reasonably acceptable to such Junior Lender.

“Affiliate” means, as to any particular Person, any Person directly or indirectly, through one or more intermediaries, Controlling, Controlled by or under common Control with the Person or Persons in question.

“Affiliate Holder” shall mean any Person that both:

(i) is a Borrower Party or any Junior Borrower or any Broad Affiliate of any of them; and

(ii) (A) is the direct or indirect holder of all or any portion of, or any legal, economic, beneficial or other interest in, a Junior Loan (including, but not limited to, any option, put, call, warrant or similar right), whether as the sole lender or a co-lender, or as a participant, noteholder or otherwise, or (B) has the power, directly or indirectly, to direct or cause the direction or management of a Junior Lender, through the exercise of voting rights, contract rights or otherwise;

provided, however, for the avoidance of doubt, that (a) a Person that is an Affiliate Holder solely as a result of being a Non-Controlling Foreclosure Holder but does not otherwise satisfy this definition, shall not constitute an “Affiliate Holder” hereunder solely as a result of such Person’s ability to exercise voting, approval, consent and other rights of a Junior Loan Holder (pursuant to the terms of the applicable Co-Lender Agreement) or an equity holder under any applicable Foreclosure Agreement, (b) a Person that holds any Certificates shall not be an Affiliate Holder solely by reason of holding, or solely in its capacity as a holder of, such Certificates and (c) no Person that is otherwise a Non-Affiliate Holder shall be deemed to be an Affiliate Holder solely due to the fact that such Person acquired its interest in a Junior Loan from an Affiliate Holder.

“Affiliate Participation Action” has the meaning provided in Section 19(a)(iv).

“Agreement” means this Agreement, as the same may be amended, restated, supplemented or otherwise modified, and in effect from time to time, pursuant to the terms hereof.

“Apollo” means, collectively, (i) Athene Annuity and Life Company, (ii) Athene Annuity & Life Assurance Company, (iii) American Equity Investment Life Insurance Company (solely with respect to that certain modified coinsurance account created pursuant to that certain trust agreement between American Equity Investment Life Insurance Company, Athene Life Re Ltd. and State Street Bank and Trust Company dated as of May 29, 2014), (iv) Midland National Life Insurance Company, an Iowa company doing business in New York under fictitious name MNLIC, and (v) American Equity Life Investment Life Insurance Company, solely with respect to that certain funds withheld account created pursuant to that certain Trust Agreement between American Equity Investment Life Insurance Company, Athene Life Re Ltd. and State Street Bank and Trust Company, dated as of August 13, 2009.

“Award” has the meaning provided in Section 10(e).

“Barclays” means Barclays Bank PLC, a public company registered in England and Wales having an address at 745 Seventh Avenue, New York, New York 10019, and its successors-in-interest.

“Borrower” has the meaning provided in the Recitals hereto.

“Borrower Group” has the meaning provided in Section 11(d).

“Borrower Party” means Borrower and any consolidated entity that includes Borrower.

“Broad Affiliate” means, as to any particular Person, any Person, directly or indirectly through one or more intermediaries, Controlling, Controlled by or under common Control (defined only as set forth in clause (b) below) with, the Person in question. As used solely in this definition of “Broad Affiliate,” “Control” means (a) the ownership, directly or indirectly, in the aggregate of ten percent (10%) or more of the beneficial ownership interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise (other than possession of voting or control rights granted to a Junior Lender pursuant to the related Junior Loan Documents, the exercise of which is contingent upon the occurrence and continuance of an Event of Default under such Junior Loan Documents, unless and until so exercised by such Junior Lender). “Controlled by”, “Controlling” and “under common Control with” shall have the respective correlative meanings thereto. For the avoidance of doubt, for so long as any Certificates are outstanding, Senior Lender shall not constitute a Broad Affiliate of Borrower or any Junior Borrower.

“CDO” has the meaning provided in the definition of the term **“Qualified Transferee”**.

“**CDO Asset Manager**” means, with respect to any Securitization Vehicle that is a CDO, the Person that is responsible for managing or administering the applicable Junior Loan (or any portion thereof or interest therein, including, without limitation, a participation interest in the Junior Loan) as an underlying asset of such Securitization Vehicle or, if applicable, as an asset of any Intervening Trust Vehicle (including, without limitation, the right to exercise any consent and control rights available to the applicable Junior Loan Holder).

“**Certificates**” means any securities (including all classes thereof) representing beneficial ownership interests in all or a portion of the Senior Loan or in a pool of mortgage loans including the Senior Loan or an interest in the Senior Loan (or any portion thereof or interest therein) issued in connection with a Securitization.

“**CIL Notice**” has the meaning provided in Section 14(d).

“**Closing Date**” means May 5, 2017.

“**Co-Lender Agreement**” means, collectively, or individually as the context shall require, each co-origination agreement, co-lender agreement, co-financing agreement, participation agreement, intercreditor agreement, or similar contractual arrangement (other than this Agreement) now or hereafter entered into by the respective holders of the Senior Note, the Mezzanine A Note, the Mezzanine B Note and the Mezzanine C Note, as the case may be, in each case as each or any of the foregoing may be amended, modified, supplemented, renewed, restated or replaced from time to time.

“**Common Guarantor**” has the meaning provided in Section 6(b).

“**Conduit**” has the meaning provided in Section 16(b).

“**Conduit Credit Enhancer**” has the meaning provided in Section 16(b)(i).

“**Conduit Inventory Loan**” has the meaning provided in Section 16(b)(i).

“**Continuing Event of Default**” means (i) with respect to the Senior Loan and the Senior Loan Documents, any “Event of Default” (as defined therein) thereunder which has occurred and is continuing (*i.e.*, has not been cured by Borrower or a Junior Lender or waived in writing by Senior Lender) for which (a) Senior Lender has provided notice of such Event of Default to Junior Lenders and any Loan Pledgee in accordance with Section 12(a), and (b) the cure periods provided to Junior Lenders and their respective Loan Pledgees (if any) pursuant to Section 12(b) and Section 12(c) shall have expired, and (ii) with respect to the Senior Junior Loan, any “Event of Default” as defined in the Senior Junior Loan Documents which has occurred and is continuing (*i.e.*, has not been cured by Senior Junior Borrower or a Junior Lender or waived in writing by Senior Junior Lender) for which (x) the Senior Junior Lender has provided notice of such Event of Default to Subordinate Junior Lenders and any Loan Pledgee in accordance with Section 12(d), and (y) the cure periods of Subordinate Junior Lender and its respective Loan Pledgees (if any) pursuant to Section 12(e) and Section 12(f) shall have expired.

“**Control**” means (a) the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of a Person, and (b) 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. “Controlled by,” “Controlling” and “under common Control with” shall have the respective correlative meaning thereto. For purposes of this definition, if more than one Qualified Transferee owns (directly or indirectly) more than fifty percent (50%) of the beneficial ownership interests of a Person and one or more of the Qualified Transferees possess the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise, even though each such Qualified Transferee individually owns less than fifty percent (50%) of such beneficial interests, such Person shall be deemed to be “Controlled by” a Qualified Transferee.

“Conversion Conditions” means unsecured indebtedness or preferred equity meeting the following criteria: (i) a maturity date (or mandatory redemption date) no earlier than the maturity date of the Senior Loan and Senior Junior Loan (if applicable), (ii) a principal amount equal to or less than the principal amount plus accrued interest and all other amounts due and unpaid in respect of the Junior Loan being converted, (iii) a current-pay interest rate, or current-pay rate of return, as applicable, equal to or less than the interest rate on the Junior Loan being converted, (iv) other economic terms substantially similar to the Junior Loan being converted, (v) no creation of a Lien on the Premises or any other collateral for the Senior Loan or the Senior Junior Loan (if applicable), (vi) subordinate by its terms to the Senior Loan and the Senior Junior Loan (if applicable), and, if requested by Senior Lender or Senior Junior Lender (if applicable), a replacement intercreditor agreement is entered into on terms substantially similar to this Agreement, (vii) if such conversion results in a change to Borrower’s ownership structure such that any new party holds more than a forty nine percent (49%) (direct or indirect) interest in Borrower, if requested by Senior Lender or Senior Junior Lender (if applicable), delivery within ten (10) Business Days of the applicable conversion of an Additional Insolvency Opinion to Senior Lender and Senior Junior Lender (if applicable) with respect thereto, (viii) if any Certificates are outstanding and rated by at least one Rating Agency, obtaining a Rating Agency Confirmation relating thereto, and (ix) either (A) Guarantor reaffirms its obligations under each Third-Party Agreement delivered in connection with the Senior Loan and the Senior Junior Loan, or (B) (I) if Guarantor fails to so reaffirm its obligations under an applicable Third-Party Agreement, or (II) regardless of whether Guarantor has so reaffirmed its obligations under an applicable Third-Party Agreement, if, upon the occurrence of the applicable conversion, the converting Junior Lender possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of Borrower or Senior Junior Borrower, whether through the ability to exercise voting power, by contract or otherwise (as opposed to veto rights in connection with major decisions), delivery to Senior Lender and Senior Junior Lender (if applicable) of supplemental Third Party Agreements from one or more Supplemental Third Party Obligor in respect of each Third-Party Agreement then constituting a Senior Loan Document or a Senior Junior Loan Document, as applicable, and in each case in a form substantially similar to the respective original Third Party Agreement that it is replacing as to Future Third Party Obligations.

“Covered Holder” means any participant or co-lender that does not deliver a Third Party Agreement to satisfy the Conversion Conditions, or pursuant to Section 6(a) in connection with a Realization Event of such Junior Loan, and on behalf of which one or more other participants or co-lenders in such Junior Loan delivers a Third Party Agreement

undertaking the respective liability (or portion thereof) of such participant or co-lender for such participant's or co-lender's pro rata portion (based on the percentage interest held by such participant or co-lender in such Junior Loan as of the date of such assumption, conversion or Realization Event) of the applicable Future Third Party Obligations.

"Crowd Funding Structure" means the practice of soliciting financial contributions and primarily funding a project or venture by raising monetary contributions which are funded primarily (I) in reliance upon Regulation Crowdfunding promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended and/or (II) through internet-mediated registries, platforms or similar portals, mail-order subscriptions, benefit events and/or other similar methods.

"DB" means Deutsche Bank AG, New York Branch, a branch of Deutsche Bank, AG, a German Bank, authorized by the New York Department of Financial Services, having an address at 60 Wall Street, New York, New York 10005, and its successors-in-interest.

"DBRS" means DBRS, Inc., and its successor-in-interest.

"DIL Notice" has the meaning provided in Section 14(b).

"Directing Junior Lender" has the meaning provided in Section 5(e).

"Directing Senior Lender" has the meaning provided in Section 5(f).

"Disclosure Document" means a prospectus, prospectus supplement (including any amendment or supplement to either thereof), private placement memorandum, or similar offering memorandum, offering circular, structural and collateral term sheet, time of sale information, road show presentation materials or other offering document or any other marketing materials or information prepared or provided in connection with a Securitization or other Transfer of all or any portion of the Senior Loan or any Junior Loan.

"Eligibility Requirements" means, with respect to any Person, that such Person (i) has total assets (in name or under management or advisement and including Uncalled Commitments) in excess of \$600,000,000 and (except with respect to a pension advisory firm, asset manager, registered investment advisor or manager or similar fiduciary) either (x) capital/statutory surplus or shareholder's or partner's equity of at least \$250,000,000 (including Uncalled Commitments) or (y) market capitalization of at least \$400,000,000, and (ii) is regularly engaged in the business of making or owning (or, in the case of a pension advisory firm, asset manager, registered investment advisor or manager or similar fiduciary, regularly engaged in managing investments in) commercial real estate loans or financings or interests therein (which may include mezzanine loans or mezzanine financings to direct or indirect owners of commercial properties, which loans or financings are secured by pledges of direct or indirect ownership interests in the owners of such commercial properties), originating preferred equity investments in direct or indirect owners of commercial properties, or owning or operating commercial properties or making investments in commercial real estate; provided, that in the event that a Qualified Transferee acquiring the Equity Collateral in connection with a Realization Event consists of more than one Person all such Persons shall be aggregated as if

they were one Person for purposes of measuring compliance with clause (i) of the Eligibility Requirements.

“Enforcement Action” means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or any portion thereof, or against any Borrower Party, including, without limitation, the taking of possession or control of the Premises or any portion thereof, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts), or (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to any Borrower Party or the Premises or any portion thereof.

“Environmental Indemnity” as used herein means (i) with respect to the Senior Loan, that certain Environmental Indemnity Agreement, dated as of the Closing Date, by Borrower and Guarantor in favor of Senior Lender, together with any supplemental indemnity delivered to Senior Lender pursuant to the terms hereof; (ii) with respect to the Mezzanine A Loan, that certain Mezzanine A Environmental Indemnity Agreement, dated as of the Closing Date, by Mezzanine A Borrower and Guarantor in favor of Mezzanine A Lender, together with any supplemental indemnity delivered to Mezzanine A Lender pursuant to the terms hereof; (iii) with respect to the Mezzanine B Loan, that certain Mezzanine B Environmental Indemnity Agreement, dated as of the Closing Date, by Mezzanine B Borrower and Guarantor in favor of Mezzanine B Lender, together with any supplemental indemnity delivered to Mezzanine B Lender pursuant to the terms hereof; and (iv) with respect to the Mezzanine C Loan, that certain Mezzanine C Environmental Indemnity Agreement, dated as of the Closing Date, by Mezzanine C Borrower and Guarantor in favor of Mezzanine C Lender, together with any supplemental indemnity delivered to Mezzanine C Lender pursuant to the terms hereof.

“Equity Collateral” means the equity interests in Borrower Party or Junior Borrower pledged pursuant to the applicable Junior Loan Documents, as the context may require.

“Equity Collateral Enforcement Action” means any action, proceeding, demand for payment, foreclosure, the taking of a bill of sale or assignment in lieu of any proceeding or foreclosure or any retention of title to the Equity Collateral authorized under the Uniform Commercial Code as now or hereafter in effect, including, without limitation, obtaining the appointment of a receiver or similar agent with respect to the Equity Collateral, the taking of possession or control of Equity Collateral or any portion thereof (other than the physical possession of any certificates evidencing Equity Collateral) or other exercise of a Junior Lender’s rights and remedies commenced by such Junior Lender (other than (x) the giving of notices of default and statements of overdue balances, (y) imposing default interest or late charges, or (z) subject to and in accordance with the provisions of this Agreement, the filing of a proof of claim by a Junior Lender in a Proceeding with respect to the applicable Junior Borrower), at law, in equity, or otherwise, in order to realize upon or vest title to the Equity Collateral (including, without limitation, an assignment in lieu of foreclosure or other final negotiated settlement in lieu of any such enforcement action) in Junior Lender free and clear of any lien or security interest, or otherwise obtaining, selling or transferring the Equity Collateral or the proceeds thereof.

“Event of Default” as used herein means (i) with respect to the Senior Loan and the Senior Loan Documents, any Event of Default (as defined therein) thereunder which has occurred and is continuing (*i.e.*, has not been cured by Borrower or a Junior Lender in accordance with the terms of this Agreement or waived in writing by Senior Lender); (ii) with respect to the Mezzanine A Loan and the Mezzanine A Loan Documents, any Event of Default (as defined therein) thereunder which has occurred and is continuing (*i.e.*, has not been cured by Mezzanine A Borrower or a Junior Lender in accordance with the terms of this Agreement or waived in writing by Mezzanine A Lender); (iii) with respect to the Mezzanine B Loan and the Mezzanine B Loan Documents, any Event of Default (as defined therein) thereunder which has occurred and is continuing (*i.e.*, has not been cured by Mezzanine B Borrower or a Junior Lender in accordance with the terms of this Agreement or waived in writing by Mezzanine B Lender); and (iv) with respect to the Mezzanine C Loan and the Mezzanine C Loan Documents, any Event of Default (as defined therein) thereunder which has occurred and is continuing (*i.e.*, has not been cured by Mezzanine C Borrower in accordance with the terms of this Agreement or a Junior Lender or waived in writing by Mezzanine C Lender).

“Fitch” means Fitch, Inc. and its successor-in-interest.

“Foreclosure Agreement” means, with respect to any Junior Loan, (a) the Co-Lender Agreement for such Junior Loan, and (b) the agreements required under such Co-Lender Agreement to be entered into by the Junior Loan Holders of such Junior Loan or the related equity holders in the event of a Realization Event.

“Foreclosure Holder” means any Person that owns, directly or indirectly, any economic, legal or other beneficial ownership interest in any applicable Borrower Party or any Junior Borrower solely by virtue of a Realization Event with respect to a Junior Loan.

“Future Third Party Obligations” means, with respect to each supplemental Third Party Agreement delivered in connection with a Realization Event pursuant to Section 6 or to comply with the Conversion Conditions, as applicable, substantially the same guaranteed obligations as the original Third Party Agreement that it is supplementing as to obligations arising in respect of acts or omissions first occurring from and after the applicable Third Party Agreement Date.

“Guarantor” means, (a) 181 West Madison Holding LLC, a Delaware limited liability company and (b) any supplemental guarantor providing a guaranty or indemnity pursuant to the terms of the Senior Loan Documents or the Junior Loan Documents, as applicable.

“Guaranty” as used herein means (i) with respect to the Senior Loan, that certain Guaranty Agreement, dated as of the Closing Date, by Guarantor in favor of Senior Lender, together with any supplemental guaranty delivered to Senior Lender pursuant to the terms hereof; (ii) with respect to the Mezzanine A Loan, that certain Mezzanine A Guaranty Agreement, dated as of the Closing Date, by Guarantor in favor of Mezzanine A Lender, together with any supplemental guaranty delivered to Mezzanine A Lender pursuant to the terms hereof; (iii) with respect to the Mezzanine B Loan, that certain Mezzanine B Guaranty Agreement, dated as of the Closing Date, by Guarantor in favor of Mezzanine B Lender, together with any

supplemental guaranty delivered to Mezzanine B Lender pursuant to the terms hereof; and (iv) with respect to the Mezzanine C Loan, that certain Mezzanine C Guaranty Agreement, dated as of the Closing Date, by Guarantor in favor of Mezzanine C Lender, together with any supplemental guaranty delivered to Mezzanine C Lender pursuant to the terms hereof.

“Guaranty Claim” has the meaning provided in Section 6(b).

“Intervening Trust Vehicle” means with respect to any Securitization Vehicle that is a CDO, a trust vehicle or other Person which holds the applicable Junior Loan (or any interest therein) as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO.

“JPMorgan” means JPMorgan Chase Bank, National Association, a banking association chartered under the laws of the United States of America having an address at 383 Madison Avenue, New York, New York 10179, and its successors-in-interest.

“Junior Borrower” means, Mezzanine A Borrower, Mezzanine B Borrower and Mezzanine C Borrower, individually or collectively as the context may require.

“Junior Borrower Group” means, with respect to each Junior Borrower, such Junior Borrower and any Person which Controls such Junior Borrower.

“Junior Borrower Party” means each of Mezzanine A Borrower, Mezzanine B Borrower, Mezzanine C Borrower, and any consolidated entity that includes any of the foregoing.

“Junior Guarantor” has the meaning provided in Section 6(b).

“Junior Lenders” has the meaning provided in the first paragraph of this Agreement. As the context requires, Junior Lenders shall have the following order of priority: (i) first, Mezzanine A Lender; (ii) second, Mezzanine B Lender; and (iii) third, Mezzanine C Lender.

“Junior Loan” means the Mezzanine A Loan, the Mezzanine B Loan and the Mezzanine C Loan, individually or collectively as the context may require.

“Junior Loan Agreement” means the Mezzanine A Loan Agreement, the Mezzanine B Loan Agreement and the Mezzanine C Loan Agreement, individually or collectively as the context may require.

“Junior Loan Default Notice” has the meaning provided in Section 12(d).

“Junior Loan Documents” means the Mezzanine A Loan Documents, the Mezzanine B Loan Documents and the Mezzanine C Loan Documents, individually or collectively as the context may require.

“Junior Loan Holder” means a holder of an interest in a Junior Loan.

“Junior Loan Liabilities” means the Mezzanine A Loan Liabilities, the Mezzanine B Loan Liabilities and the Mezzanine C Loan Liabilities, individually or collectively as the context may require.

“Junior Loan Modification” has the meaning provided in Section 8(b).

“Junior Loan Monetary Cure Period” has the meaning provided in Section 12.

“Junior Loan Non-Monetary Cure Period” has the meaning provided in Section 12.

“Junior Note” means the Mezzanine A Note, the Mezzanine B Note and the Mezzanine C Note, individually or collectively as the context may require.

“Junior Purchase Election Notice” has the meaning provided in Section 14(c).

“Junior Purchase Option Event” has the meaning provided in Section 14(b).

“Junior Purchase Option Notice” has the meaning provided in Section 14(c).

“Kicker Conditions” means any additional contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises (or similar equity participation, but excluding any obligation to distribute cash otherwise available for distribution) that does not (i) become payable or otherwise impose monetary obligations prior to the date the Senior Loan Liabilities (and, in the case of modifications of the Subordinate Junior Loan, the Senior Junior Loan Liabilities) are no longer outstanding, or (ii) violate applicable law.

“Loan Pledgee” has the meaning provided in Section 16(a).

“Loan Purchase Price” has the meaning provided in Section 14(a).

“Maturity Default” means, with respect to the Senior Loan and each Junior Loan, an Event of Default (as defined therein) under such Senior Loan or Junior Loan, as applicable, resulting from the occurrence of the Maturity Date thereunder without such Senior Loan or Junior Loan, as applicable, being repaid in full in cash by the applicable Borrower or Junior Borrower.

“Mezzanine A Borrower” has the meaning provided in the Recitals hereto.

“Mezzanine A Lender” has the meaning provided in the first paragraph of this Agreement.

“Mezzanine A Loan” has the meaning provided in the Recitals hereto.

“Mezzanine A Loan Agreement” has the meaning provided in the Recitals hereto.

“Mezzanine A Loan Documents” has the meaning provided in the Recitals hereto.

“Mezzanine A Loan Liabilities” shall mean, collectively, all of the indebtedness, liabilities and obligations of Mezzanine A Borrower under any Mezzanine A Loan Document, including, without limitation, (i) the principal amount of, and accrued interest on (including, without limitation, any interest which accrues after the commencement of any Proceeding of the Mezzanine A Borrower, whether or not such interest would be allowed in such Proceeding), the Mezzanine A Loan, (ii) all other indebtedness, obligations and liabilities of Mezzanine A Borrower to Mezzanine A Lender now existing or hereafter incurred or created under the Mezzanine A Loan Documents, and (iii) all other indebtedness, obligations and liabilities of Mezzanine A Borrower to Mezzanine A Lender now existing or hereafter incurred, created and arising from or relating to the Mezzanine A Loan, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“Mezzanine A Note” has the meaning provided in the Recitals hereto.

“Mezzanine B Borrower” has the meaning provided in the Recitals hereto.

“Mezzanine B Lender” has the meaning provided in the first paragraph of this Agreement.

“Mezzanine B Loan” has the meaning provided in the Recitals hereto.

“Mezzanine B Loan Agreement” has the meaning provided in the Recitals hereto.

“Mezzanine B Loan Documents” has the meaning provided in the Recitals hereto.

“Mezzanine B Loan Liabilities” shall mean, collectively, all of the indebtedness, liabilities and obligations of Mezzanine B Borrower under any Mezzanine B Loan Document, including, without limitation, (i) the principal amount of, and accrued interest on (including, without limitation, any interest which accrues after the commencement of any Proceeding of the Mezzanine B Borrower, whether or not such interest would be allowed in such Proceeding), the Mezzanine B Loan, (ii) all other indebtedness, obligations and liabilities of Mezzanine B Borrower to Mezzanine B Lender now existing or hereafter incurred or created under the Mezzanine B Loan Documents, and (iii) all other indebtedness, obligations and liabilities of Mezzanine B Borrower to Mezzanine B Lender now existing or hereafter incurred, created and arising from or relating to the Mezzanine B Loan, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“Mezzanine B Note” has the meaning provided in the Recitals hereto.

“Mezzanine C Borrower” has the meaning provided in the Recitals hereto.

“Mezzanine C Lender” has the meaning provided in the first paragraph of this Agreement.

“**Mezzanine C Loan**” has the meaning provided in the Recitals hereto.

“**Mezzanine C Loan Agreement**” has the meaning provided in the Recitals hereto.

“**Mezzanine C Loan Documents**” has the meaning provided in the Recitals hereto.

“**Mezzanine C Loan Liabilities**” shall mean, collectively, all of the indebtedness, liabilities and obligations of Mezzanine C Borrower under any Mezzanine C Loan Document, including, without limitation, (i) the principal amount of, and accrued interest on (including, without limitation, any interest which accrues or is assessed after the commencement of any Proceeding of the Mezzanine C Borrower, whether or not such interest or would be allowed in such Proceeding), the Mezzanine C Loan, (ii) all other indebtedness, obligations and liabilities of Mezzanine C Borrower to Mezzanine C Lender now existing or hereafter incurred or created under the Mezzanine C Loan Documents, and (iii) all other indebtedness, obligations and liabilities of Mezzanine C Borrower to Mezzanine C Lender now existing or hereafter incurred, created and arising from or relating to the Mezzanine C Loan, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“**Mezzanine C Note**” has the meaning provided in the Recitals hereto.

“**Monetary Cure Period**” has the meaning provided in Section 12(b).

“**Moody’s**” means Moody’s Investors Service, Inc., and its successor-in-interest.

“**Morningstar**” means Morningstar Credit Ratings, LLC, or any of its successors in interest, assigns, or changed entity name or designation resulting from any acquisition by Morningstar, Inc. or other similar entity of Morningstar Credit Ratings, LLC.

“**Mortgage**” has the meaning provided in the Recitals hereto.

“**Natixis**” means Natixis Real Estate Capital LLC, a Delaware limited liability company having an address at 1251 Avenue of the Americas, 5th Floor, New York, New York 10020, and its successors-in-interest.

“**Non-Affiliate Holder**” shall mean the holder of any interest in a Junior Loan (whether as the sole lender or a co-lender, or as a participant, noteholder or otherwise) that is not an Affiliate Holder.

“**Non-Controlling Foreclosure Holder**” means any Foreclosure Holder that has acquired, directly or indirectly, not more (when aggregated with the interests of its Affiliates) than a forty-nine (49%) economic, legal or other beneficial interest in any applicable Borrower Party or a Junior Borrower, as the case may be, provided that no applicable Foreclosure Agreement provides such Foreclosure Holder (or its Affiliates) with voting, approval, consent or other rights (other than those set forth in or otherwise contemplated by the terms of such Co-Lender Agreement as of the date hereof) that would result in such Foreclosure Holder (i) directly

or indirectly, through one or more intermediaries, Controlling, being Controlled by or under common Control with any Borrower Party or any Junior Borrower, or (ii) having the power, directly or indirectly, to direct or cause the direction of the management or policies of any Borrower Party or any Junior Borrower, whether through the ability to exercise voting power, by contract or otherwise.

“Non-Monetary Cure Period” has the meaning provided in Section 12(c).

“Notice” has the meaning provided in Section 18(a).

“Optioned Junior Loan” has the meaning provided in Section 14(c).

“Participating Holder” means any participant, co-lender or co-financier that elects to deliver a Third Party Agreement or Letter of Credit in order to satisfy the Conversion Conditions, or pursuant to the terms and conditions of Section 6(a), as the case may be.

“Permitted Fund Manager” means any Person that on the date of determination is not subject to a Proceeding and is (i) one of the Persons listed on Exhibit E or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) a Person that is a Qualified Transferee pursuant to clauses (iii)(A), (B), (C) (D) or (G) of the definition thereof, or (iii) a Junior Lender; provided that in each case, such Person is (a) investing through a fund or funds with aggregate committed capital under management of at least \$250,000,000, and (b) not then (x) the subject of a bankruptcy action or (y) an Embargoed Person.

“Permitted Investment Fund” has the meaning provided in the definition of Qualified Transferee below.

“Person” means any individual, corporation, limited liability company, general or limited partnership, joint venture, estate, trust, unincorporated association, bank, any federal, state, county or municipal government or any bureau, department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pledge” has the meaning provided in Section 16(a).

“Premises” has the meaning provided in the Recitals hereto.

“Proceeding” has the meaning provided in Section 11(d).

“Property Manager” means the current Manager or any successor thereto as a Qualified Manager of the Premises pursuant to the Senior Loan Documents.

“Protective Advances” means all sums advanced for the purpose of payment of real estate taxes (including special assessments or payments in lieu of real estate taxes), maintenance costs, insurance premiums, or other items (including capital expenses and leasing costs such as (without limitation) leasing commissions and tenant improvement allowances) reasonably necessary to protect the Premises or any applicable Separate Collateral respectively, or any respective portion thereof (including, but not limited to, all reasonable attorneys’ fees, and

other costs relating to the entry upon the Premises or any portion thereof to make repairs and the payment, purchase, contest or compromise of any encumbrance, charge or lien which in the reasonable judgment of Senior Lender or a Junior Lender is likely to be prior or superior to the Senior Loan Documents or such Junior Lender's Junior Loan Documents) from forfeiture, casualty, loss or waste, including, with respect to the Senior Loan or the Senior Junior Loan, amounts advanced or otherwise paid by a Junior Lender to effect a cure pursuant to Section 12 (including as otherwise permitted by this Agreement).

"Purchase Election Notice" has the meaning provided in Section 14(a).

"Purchase Option Event" has the meaning provided in Section 14(a).

"Purchase Option Notice" has the meaning provided in Section 14(a).

"Qualified Manager" means (a) Property Manager; (b) SLG or any Affiliate thereof, provided that, at the time of appointment of such Person, (x) there has been no material adverse change since the Closing Date to such Person's operations or ability to conduct its business in the ordinary course, (y) is not the subject of a Bankruptcy Action and has not been the subject of a Bankruptcy Action during the previous ten (10) year period (unless, in the case of an involuntary Bankruptcy Action, such involuntary Bankruptcy Action was promptly dismissed), and (z) such entity shall have entered into a Replacement Management Agreement; or (c) any other property manager that (1) is a nationally recognized property management company having at least ten (10) years' experience in the management of office properties in New York City, and (2) at the time of its engagement as property manager, has at least 7,500,000 rentable square feet under management (excluding the Property), including at least 5,000,000 rentable square feet under management in office properties in New York City, provided, that with respect clause (c), (i) at the time of appointment, such Person (A) is not, and its principals are not, the subject of a Bankruptcy Action, and (B) has not been subject of a governmental or regulatory investigation which resulted in a final nonappealable conviction for criminal activity, and (ii) such entity shall have entered into a Replacement Management Agreement; or (d) in the reasonable judgment of Senior Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Properties, provided, that with respect clause (d), (i) so long as any Certificates are outstanding, a Rating Agency Confirmation shall have been obtained from the Approved Rating Agencies with respect to such entity and its management of the Premises, (ii) at the time of appointment, such Person (A) is not, and its principals are not, the subject of a Bankruptcy Action, and (B) has not been subject of a governmental or regulatory investigation which resulted in a final nonappealable conviction for criminal activity, (iii) if such Person is an Affiliate of Borrower, an Additional Insolvency Opinion in form acceptable to Lender and each Approved Rating Agency shall be required to be delivered, and (iv) such entity shall have entered into a Replacement Management Agreement.

"Qualified Transferee" means (i) JPMorgan, Natixis, SG, DB, Barclays, and any of their respective Affiliates, (ii) Apollo, Meritz Real Estate Asset Management, Meritz Private Real Estate Fund VI, Meritz Private Real Estate Fund VII, or an SLG Qualified Transferee, or (iii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the Persons described in clause (iii)(A), (iii)(B) or (iii)(F) of this definition that satisfies the Eligibility Requirements;

(D) any Person Controlled by, Controlling or under common Control with any one or more of the Persons described in clause (i), clause (ii) or clause (iii)(A), (iii)(B) or (iii)(C) above or clause (iii)(F) of this definition (provided that for this purpose, such Person and all such other Persons shall be aggregated as if they were one Person for purposes of measuring compliance with clause (i) of the Eligibility Requirements);

(E) a Qualified Trustee (or, in the case of collateralized debt obligations (“**CDO**”), a single-purpose bankruptcy-remote entity which contemporaneously assigns or pledges its interest in the applicable Junior Loan or a participation interest therein (or any portion thereof) to a Qualified Transferee) in connection with (aa) a securitization of, or (bb) the creation of a CDO secured by, or (cc) a financing through an “owner trust” of, the applicable Junior Loan or any interest therein (any of the foregoing, a “**Securitization Vehicle**”), provided, that (1) one or more classes of securities issued by such Securitization Vehicle is initially rated at least investment grade by each of the Rating Agencies (including by Morningstar, if rated by Morningstar) (it being understood that with respect to any Rating Agency that assigned such a rating to the securities issued by such Securitization Vehicle, a Rating Agency Confirmation will not be required in connection with a Transfer of a Junior Loan or any interest therein to such Securitization Vehicle, except that if one or more classes of Certificates is rated by Moody’s, the transferee may not rely on this clause (1) with respect to Moody’s); (2) in the case of a Securitization Vehicle that is not a CDO, the special servicer of such Securitization Vehicle has the Required Special Servicer Rating at the time of Transfer and the related transaction documents for such Securitization Vehicle require that any successor have the Required Special Servicer Rating (such Person, an “**Approved Servicer**”) and such Approved Servicer is required to service and administer the applicable Junior Loan or any interest therein in accordance with servicing arrangements for the assets held by the Securitization Vehicle which require that such Approved Servicer act in accordance with a servicing standard notwithstanding any contrary direction or instruction from any other Person; or (3) in the case of a Securitization Vehicle that is a CDO, the CDO Asset Manager and, if applicable, each Intervening Trust Vehicle that is not administered and

managed by a CDO Asset Manager which is a Qualified Transferee, are each a Qualified Transferee under clauses (iii)(A), (B), (C), (D), (F), (G) or (H) of this definition;

(F) an investment fund, limited liability company, limited partnership or general partnership (a “**Permitted Investment Fund**”) where (I) a Permitted Fund Manager acts (directly or indirectly) as general partner, managing member or fund manager, and (II) (x) at least fifty percent (50%) of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more of the following: a Junior Lender, a Qualified Transferee, an institutional “accredited investor”, within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, and/or a “qualified institutional buyer” or both within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such institutional “accredited investors” or “qualified institutional buyers” that are used to satisfy the fifty percent (50%) test set forth above in this clause (F) satisfy the financial tests in clause (i) of the definition of Eligibility Requirements, or (y) such Permitted Investment Fund, collectively with one or more other Permitted Investment Funds that then hold interests in the applicable Junior Loan and are managed by such Permitted Fund Manager, in the aggregate satisfy the financial tests in clause (i) of the Eligibility Requirements; provided, further, that such institutional “accredited investors”, “qualified institutional buyers” and/or the Qualified Transferees that are used to satisfy the fifty percent (50%) test set forth above in this clause (F) do not need to satisfy the experience test set forth in clause (ii) of the definition of Eligibility Requirements so long as the Permitted Fund Manager does;

(G) any Person that is a Qualified Transferee but is acting in an agency capacity in connection with a lending syndicate, so long as more than fifty percent (50%) of the lenders in the lending syndicate (by loan balance or committed loan amounts) are Qualified Transferees; provided that the Qualified Transferees that are used to satisfy the fifty percent (50%) test set forth above in this clause (G) do not need to satisfy the experience test set forth in clause (ii) of the definition of Eligibility Requirements so long as the Qualified Transferee acting in such agency capacity does;

(H) following a Securitization of the Senior Loan, any Person as to which a Rating Agency Confirmation shall have been given with respect to such Transfer.

Notwithstanding the foregoing, no Person shall be (or be deemed to be) a Qualified Transferee if (i) such Person is the subject of any Bankruptcy Action, (ii) such Person is an Embargoed Person, or (iii) such Person is capitalized with any Crowd Funding Structure.

“**Qualified Trustee**” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top three (3) rating categories of S&P and Moody’s and one of either Fitch or any other Rating Agency that rates such debt.

“Rating Agencies” means, prior to the final Securitization of the entire Senior Loan, collectively, S&P, Moody’s, Fitch, Morningstar, and DBRS and any other nationally-recognized statistical rating agency which has been designated by Senior Lender and, after the final Securitization of the entire Senior Loan, shall mean any of the foregoing that have been engaged to rate any of the Certificates.

“Rating Agency Confirmation” means a written affirmation from each of the Rating Agencies that the credit rating of the Certificates assigned by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event. In the event that (i) no Certificates are outstanding, (ii) each and every Rating Agency, in writing, waives, declines or refuses to review or otherwise engage any request for Rating Agency Confirmation hereunder, or (iii) the Senior Loan is not part of a Securitization, any action that would otherwise require a Rating Agency Confirmation (but would not otherwise require the consent of Senior Lender hereunder) shall instead require the consent of Senior Lender, which consent shall not be unreasonably withheld, conditioned or delayed; provided that, Senior Lender shall not be entitled to charge a Junior Lender fees in connection with such consent. For the purposes of this Agreement, if any Rating Agency shall, in writing, waive, decline or refuse to review or otherwise engage any request for Rating Agency Confirmation hereunder, such waiver, declination, or refusal shall be deemed to eliminate, for such request only, the condition that a Rating Agency Confirmation by such Rating Agency (only) be obtained for purposes of this Agreement. For purposes of clarity, any such waiver, declination or refusal to review or otherwise engage in any request for a Rating Agency Confirmation hereunder shall not be deemed a waiver, declination or refusal to review or otherwise engage in any subsequent request for a Rating Agency Confirmation hereunder and the condition for Rating Agency Confirmation pursuant to this Agreement for any subsequent request shall apply regardless of any previous waiver, declination or refusal to review or otherwise engage in such prior request. For the purpose of this definition, any Rating Agency Confirmation, waiver, request, acknowledgement or approval that is required to be in writing may be in the form of electronic mail.

“Realization Event” means a foreclosure, assignment-in-lieu thereof or other realization upon a Junior Lender’s Equity Collateral, including, without limitation, obtaining title to such Equity Collateral or selling or otherwise transferring such Equity Collateral, or exercising voting power to direct or cause the direction of the management or policies of the Equity Collateral pursuant to rights granted in the applicable Junior Loan Documents, but not any other exercise of remedies by a Junior Lender to the extent the same does not result in a realization upon such Junior Lender’s Equity Collateral (it being acknowledged and agreed that in the case of such voting power, the mere grant of such voting power in the applicable Junior Loan Documents shall not constitute a Realization Event, provided that, the affirmative exercise of such voting power to direct or cause the direction of the management or policies of Borrower or Senior Junior Borrower, as applicable, by or on behalf of the applicable Junior Lender shall constitute a Realization Event).

“Redirection Notice” has the meaning provided in Section 16(a).

“Required Special Servicer Rating” means a special servicer that (i) has a rating of at least “CSS3” in the case of Fitch, (ii) is on S&P’s select servicer list as a “U.S. Commercial Mortgage Special Servicer” in the case of S&P, (iii) in the case of Moody’s, such special servicer is acting as a transaction-level special servicer in a commercial mortgage loan securitization that was rated by Moody’s within the twelve (12) month period prior to the date of determination and Moody’s has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities as the reason for such downgrade or withdrawal, (iv) in the case of Morningstar, such special servicer has a ranking by Morningstar equal to or higher than “MOR CS3” as a special servicer, is acting as special servicer in a commercial mortgage loan securitization that was rated by a Rating Agency within the twelve (12) month period prior to the date of determination, and Morningstar has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities, and (v) in the case of DBRS, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by DBRS within the twelve (12) month period prior to the date of determination and DBRS has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities as the reason for such downgrade or withdrawal. The requirement of any rating agency that is not a Rating Agency shall be disregarded.

“Restricted Rights” has the meaning provided in Section 19(a)(iii).

“S&P” means Standard & Poor’s Ratings Services and its successor-in-interest.

“Securitization” means the sale or securitization of the Senior Loan (or any portion thereof) in one or more transactions through the issuance of securities, which securities may be assigned ratings by the Rating Agencies.

“Securitization Vehicle” has the meaning provided in the definition of Qualified Transferee above.

“Senior Junior Borrowers” means (i) with respect to the Mezzanine A Loan, no other Junior Borrower; (ii) with respect to the Mezzanine B Loan, Mezzanine A Borrower; and (iii) with respect to the Mezzanine C Loan, Mezzanine A Borrower and Mezzanine B Borrower.

“Senior Junior Borrower Group” has the meaning provided in Section 11(d)(iv).

“Senior Junior Lenders” means (i) with respect to the Mezzanine A Loan, no other Junior Lender; (ii) with respect to the Mezzanine B Loan, Mezzanine A Lender; and (iii) with respect to the Mezzanine C Loan, Mezzanine A Lender and Mezzanine B Lender.

“Senior Junior Loan” means (i) with respect to the Mezzanine A Loan, no other Junior Loan; (ii) with respect to the Mezzanine B Loan, the Mezzanine A Loan; and (iii) with respect to the Mezzanine C Loan, the Mezzanine A Loan and the Mezzanine B Loan.

“Senior Junior Loan Agreement” means (i) with respect to the Mezzanine A Loan, no other Junior Loan Agreement; (ii) with respect to the Mezzanine B Loan, the Mezzanine A Loan Agreement; and (iii) with respect to the Mezzanine C Loan, the Mezzanine A Loan Agreement and the Mezzanine B Loan Agreement.

“Senior Junior Loan Documents” means (i) with respect to the Mezzanine A Loan, no other Junior Loan Documents; (ii) with respect to the Mezzanine B Loan, the Mezzanine A Loan Documents; and (iii) with respect to the Mezzanine C Loan, the Mezzanine A Loan Documents and the Mezzanine B Loan Documents.

“Senior Junior Loan Liabilities” means (i) with respect to the Mezzanine A Loan, no other Junior Loan Liabilities; (ii) with respect to the Mezzanine B Loan, the Mezzanine A Loan Liabilities; and (iii) with respect to the Mezzanine C Loan, the Mezzanine A Loan Liabilities and the Mezzanine B Loan Liabilities.

“Senior Junior Loan Purchase Price” has the meaning provided in Section 14(a).

“Senior Lender” has the meaning provided in the first paragraph of this Agreement.

“Senior Loan” has the meaning provided in the Recitals hereto.

“Senior Loan Agreement” has the meaning provided in the Recitals hereto.

“Senior Loan Default Notice” has the meaning provided in Section 12(a).

“Senior Loan Documents” has the meaning provided in the Recitals hereto.

“Senior Loan Liabilities” means, collectively, all of the indebtedness, liabilities and obligations of each Borrower Party under any Senior Loan Document, including, without limitation (i) the principal amount of, and accrued interest on (including, without limitation, any interest which accrues after the commencement of any Proceeding of the applicable Borrower Party, whether or not such interest would be allowed in such Proceeding), the Senior Loan, and (ii) all other indebtedness, obligations and liabilities of each Borrower Party to Senior Lender now existing or hereafter incurred, created or arising from or relating to the Senior Loan, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances, post petition interest, special servicing, workout and liquidation fees payable to any Servicer.

“Senior Loan Modification” has the meaning provided in Section 8(a).

“Senior Note” has the meaning provided in the Recitals hereto.

“**Separate Collateral**” means with respect to each Junior Loan (i) the Equity Collateral securing such Junior Loan, and (ii) any other collateral given as security for such Junior Loan pursuant to the related Junior Loan Documents, in each case not directly constituting security for the Senior Loan or the other Junior Loan.

“**SG**” means Société Générale, a bank organized under the laws of France, having an address at 245 Park Avenue New York, NY 10167, and its successors-in-interest.

“**SLG**” means SL Green Realty Corp., a Maryland corporation.

“**SLG Qualified Transferee**” means (a) SLG, (b) SL Green Funding LLC, (c) 245 Park Mezz Funding LLC or (c) any Affiliate of the foregoing.

“**Subordinate Junior Borrower**” means (i) with respect to the Mezzanine A Loan, Mezzanine B Borrower; (ii) with respect to the Mezzanine B Loan, Mezzanine C Borrower; and (iii) with respect to the Mezzanine C Loan, none of the Junior Borrowers.

“**Subordinate Junior Lender**” means (i) with respect to the Mezzanine A Loan, the Mezzanine B Lender; (ii) with respect to the Mezzanine B Loan, the Mezzanine C Lender; and (iii) with respect to the Mezzanine C Loan, none of the Junior Lenders.

“**Subordinate Junior Loan**” means (i) with respect to the Mezzanine A Loan, the Mezzanine B Loan; (ii) with respect to the Mezzanine B Loan, the Mezzanine C Loan; and (iii) with respect to the Mezzanine C Loan, none of the Junior Loans.

“**Subordinate Junior Loan Documents**” means (i) with respect to the Mezzanine A Loan, the Mezzanine B Loan Documents; (ii) with respect to the Mezzanine B Loan, the Mezzanine C Loan Documents; and (iii) with respect to the Mezzanine C Loan, none of the Junior Loan Documents.

“**Supplemental Third Party Obligor**” means a transferee of the applicable Equity Collateral, or a Person who, alone or together with others, owns, directly or indirectly, interests in the applicable Junior Loan or a transferee of the applicable Equity Collateral, that either (a) is reasonably acceptable to Senior Lender and Senior Junior Lender, if applicable, or (b) is not subject to sovereign immunity and collectively with any other Supplemental Third Party Obligors has either (i) capital/statutory surplus or shareholders’ or partners’ equity in an amount (A) equal to at least \$250,000,000 (including Uncalled Commitments) or (B) which, when added to (I) the amount of any cash, Letter of Credit or other collateral reasonably acceptable to Senior Lender and Senior Junior Lender posted with Senior Lender (or Senior Junior Lender, as applicable) as security for such transferee’s or such Person’s obligations under each and every supplemental Third Party Agreement delivered by such transferee or such Person and (II) the amount which a direct or indirect parent of such transferee or such Person (which parent itself has either (x) market capitalization of not less than \$400,000,000 or (y) capital/statutory surplus or shareholders’ or partners’ equity in an amount not less than \$250,000,000) (including Uncalled Commitments) has irrevocably committed to contribute to such transferee or Person (pursuant to an agreement reasonably satisfactory to Senior Lender and Senior Junior Lender), would total at least \$250,000,000; or (ii) market capitalization in an

amount equal to at least \$400,000,000. Notwithstanding the foregoing, in the event that more than one Supplemental Third Party Obligor shall deliver respective supplemental Third Party Agreements as provided in Section 6(a), the amount of capital/statutory surplus or shareholders' or partners' equity or market capitalization, as applicable, required in respect of such Supplemental Third Party Obligor (taking into account any cash, Letter of Credit or other collateral posted pursuant to the immediately preceding sentence) shall in each case be a pro rata portion of the applicable amount set forth in the preceding sentence, based on the percentage interest of the applicable Participating Holder in the applicable Junior Loan as of the applicable Third Party Agreement Date (as such percentage interest may be increased by an amount equal to the portion identified in the applicable supplemental Third Party Agreement as the percentage interest in the Junior Loan held by each applicable Covered Holder, if any, being covered by such supplemental Third Party Agreement).

“Third Party Agreement” has the meaning provided in Section 6(a).

“Third Party Agreement Date” means, as applicable in connection with the delivery of any supplemental Third Party Agreement, the date of the applicable Realization Event or the date of the applicable conversion in respect of which the Conversion Conditions apply.

“Third Party Obligor” has the meaning provided in Section 6(a).

“Transfer” means any assignment, pledge, conveyance, sale, transfer, mortgage, encumbrance, grant of a security interest, issuance of a participation interest, conversion or other disposition (including, without limitation, pursuant to a foreclosure or deed or assignment-in-lieu thereof), either directly or indirectly, by operation of law or otherwise. “Transferred” and “Transferring” shall have the respective correlative meanings thereto.

“Uncalled Commitments” means uncalled irrevocable capital commitments from one or more Persons that the relevant Junior Lender reasonably believes satisfy, in the aggregate, the requirements of clause (i) of the definition of “Eligibility Requirements” in this Section 1.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the Recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement and the terms defined in this Agreement have the meanings assigned to them in this Agreement, and the use of any gender herein shall be deemed to include the other genders;

(ii) capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Senior Loan Agreement as of the date hereof unless the parties hereto agree to an amendment of any such terms in accordance with Section 18(d) hereof;

(iii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or

addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement, unless otherwise specified;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to Paragraphs and other subdivisions;

(v) the headings and captions used in this Agreement are for convenience of reference only and do not define, limit or describe the scope or intent of the provisions of this Agreement;

(vi) the terms “includes” or “including” shall mean without limitation by reason of enumeration;

(vii) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(viii) the words “to a Junior Lender’s knowledge” or “to the knowledge of a Junior Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of the applicable Junior Lender with direct oversight responsibility for its Junior Loan without independent investigation or inquiry and without any imputation whatsoever;

(ix) the words “to Senior Lender’s knowledge” or “to the knowledge of Senior Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Senior Lender with direct oversight responsibility for the Senior Loan without independent investigation or inquiry and without any imputation whatsoever;

(x) unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined; and

(xi) the use of terms “Junior Lender”, “Senior Junior Lender”, or “Subordinate Junior Lender” to refer to any Person shall include, as applicable, each designee of such Person that takes title to (a) Equity Collateral pursuant to a Realization Event, or (b) the Senior Loan or any applicable Senior Junior Loan pursuant to a purchase thereof in accordance with Section 14.

Section 2. CHARACTERIZATION OF THE JUNIOR LOANS.

(a) Senior Loan. Each Junior Lender, with respect only to its respective Junior Loan and with respect to itself only, hereby acknowledges that (i) Borrower will not ever have any liability or obligation whatsoever with respect to the Junior Notes or otherwise in connection with the payment of the Junior Loans, (ii) the Junior Loans do not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien

or encumbrance upon, or security interest in any portion of the Premises or any other collateral owned by Borrower securing the Senior Loan or otherwise grant to any Junior Lender the status as a creditor of Borrower, (iii) such Junior Lender shall not assert, claim or raise as a defense, any such lien, encumbrance upon or security interest in the Premises or any status as a creditor of any Borrower Party in any action or proceeding, including any Proceeding commenced by or against any Borrower Party, and (iv) such Junior Lender shall not assert, pursue, confirm or acquiesce in any way to any recharacterization of the Junior Loans as having conferred upon any Junior Lender any lien or encumbrance upon, or security interest in, the Premises or any portion thereof or as having conferred upon any such Junior Lender the status of a creditor of any Borrower Party.

(b) Mezzanine A Loan. Mezzanine A Lender hereby acknowledges that (i) no Junior Borrower other than the Mezzanine A Borrower will ever have any liability or obligation whatsoever with respect to the Mezzanine A Note or otherwise in connection with the payment of the Mezzanine A Loan; (ii) the Mezzanine A Loan does not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Separate Collateral securing any Junior Loan other than the Mezzanine A Loan; (iii) the Mezzanine A Loan does not grant to Mezzanine A Lender the status as a creditor of any Junior Borrower other than Mezzanine A Borrower; (iv) Mezzanine A Lender shall not assert, claim or raise as a defense, any such lien or encumbrance upon or security interest in the Separate Collateral securing any Junior Loan other than the Mezzanine A Loan; (v) Mezzanine A Lender shall not assert, claim or raise as a defense any status as a creditor of any Junior Borrower other than Mezzanine A Borrower in any action or proceeding, including any Proceeding commenced by or against Mezzanine A Borrower; (vi) Mezzanine A Lender shall not assert, pursue, confirm or acquiesce in any way to any recharacterization of the Mezzanine A Loan as having conferred upon Mezzanine A Lender any lien or encumbrance upon, or security interest in, the Separate Collateral securing any Junior Loan other than the Mezzanine A Loan or as having conferred upon Mezzanine A Lender the status of a creditor of any Junior Borrower other than Mezzanine A Borrower; and (vii) any Subordinate Junior Lender to the Mezzanine A Lender may obtain title to its respective Separate Collateral subject to the terms of Section 6 and Mezzanine A Lender consents thereto.

(c) Mezzanine B Loan. Mezzanine B Lender hereby acknowledges that (i) no Junior Borrower other than the Mezzanine B Borrower will ever have any liability or obligation whatsoever with respect to the Mezzanine B Note or otherwise in connection with the payment of the Mezzanine B Loan; (ii) the Mezzanine B Loan does not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Separate Collateral securing any Junior Loan other than the Mezzanine B Loan; (iii) the Mezzanine B Loan does not grant to Mezzanine B Lender the status as a creditor of any Junior Borrower other than Mezzanine B Borrower; (iv) Mezzanine B Lender shall not assert, claim or raise as a defense, any such lien or encumbrance upon or security interest in the Separate Collateral securing any Junior Loan other than the Mezzanine B Loan; (v) Mezzanine B Lender shall not assert, claim or raise as a defense any status as a creditor of any Junior Borrower other than Mezzanine B Borrower in any action or proceeding, including any Proceeding commenced by or against Mezzanine B Borrower; (vi) Mezzanine B Lender shall not assert, pursue, confirm or acquiesce in any way to any recharacterization of the Mezzanine B Loan as having conferred upon Mezzanine B Lender any

lien or encumbrance upon, or security interest in, the Separate Collateral securing any Junior Loan other than the Mezzanine B Loan or as having conferred upon Mezzanine B Lender the status of a creditor of any Junior Borrower other than Mezzanine B Borrower; and (vii) the Subordinate Junior Lender to the Mezzanine B Lender may obtain title to its Separate Collateral subject to the terms of Section 6 and Mezzanine B Lender consents thereto.

(d) Mezzanine C Loan. Mezzanine C Lender hereby acknowledges that (i) no Junior Borrower other than the Mezzanine C Borrower will ever have any liability or obligation whatsoever with respect to the Mezzanine C Note or otherwise in connection with the payment of the Mezzanine C Loan; (ii) the Mezzanine C Loan does not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Separate Collateral securing any Junior Loan other than the Mezzanine C Loan; (iii) the Mezzanine C Loan does not grant to Mezzanine C Lender the status as a creditor of any Junior Borrower other than Mezzanine C Borrower; (iv) Mezzanine C Lender shall not assert, claim or raise as a defense, any such lien or encumbrance upon or security interest in the Separate Collateral securing any Junior Loan other than the Mezzanine C Loan; (v) Mezzanine C Lender shall not assert, claim or raise as a defense any status as a creditor of any Junior Borrower other than Mezzanine C Borrower in any action or proceeding, including any Proceeding commenced by or against Mezzanine C Borrower; and (vi) Mezzanine C Lender shall not assert, pursue, confirm or acquiesce in any way to any recharacterization of the Mezzanine C Loan as having conferred upon Mezzanine C Lender any lien or encumbrance upon, or security interest in, the Separate Collateral securing any Junior Loan other than the Mezzanine C Loan or as having conferred upon Mezzanine C Lender the status of a creditor of any Junior Borrower other than Mezzanine C Borrower.

(e) Intentionally Omitted.

(f) Intentionally Omitted.

(g) Junior Loans. Senior Lender hereby acknowledges that (i) no Junior Borrower will ever have any liability or obligation whatsoever with respect to the Senior Note or otherwise in connection with the payment of the Senior Loan; (ii) the Senior Loan does not constitute or impose, and shall not be deemed or construed as constituting or imposing now or hereafter, a lien or encumbrance upon, or security interest in any portion of the Separate Collateral securing any Junior Loan, and the Separate Collateral securing any Junior Loan is not collateral for the Senior Loan; (iii) the Senior Loan does not grant to Senior Lender the status as a creditor of any Junior Borrower; (iv) Senior Lender shall not assert, claim, or raise as a defense, any such lien or encumbrance upon or security interest in the Separate Collateral securing any Junior Loan; (v) Senior Lender shall not assert, claim, or raise as a defense any status as a creditor of any Junior Borrower in any action or proceeding, including any Proceeding commenced by or against any Junior Borrower; (vi) Senior Lender shall not assert, pursue, confirm, or acquiesce in any way to any recharacterization of the Senior Loan as having conferred upon Senior Lender any lien or encumbrance upon, or security interest in, the Separate Collateral securing any Junior Loan or as having conferred upon Senior Lender the status as a creditor of any Junior Borrower, and (vii) Junior Lenders may obtain title to their respective Separate Collateral subject to the terms of Section 6 and Senior Lender hereby consents thereto. Notwithstanding any provisions herein to the contrary, Senior Lender agrees that no default or

Event of Default under any Junior Loan Documents shall, in and of itself, constitute or give rise to a default or Event of Default under the Senior Loan Documents, entitle Senior Lender to accelerate payments under the Senior Loan Documents or entitle Senior Lender to modify any provisions of the Senior Loan Documents; provided, however, the circumstances giving rise to a default or Event of Default under any Junior Loan Documents may independently give rise to a default or Event of Default under the Senior Loan Documents as provided for therein. Notwithstanding any provisions herein to the contrary, Senior Junior Lenders agree that no default or Event of Default under any Subordinate Junior Loan Documents shall, in and of itself, constitute or give rise to a default or Event of Default under the Senior Junior Loan Documents, entitle any Senior Junior Lender to accelerate payments under the Senior Junior Loan Documents or entitle any Senior Junior Lender to modify any provisions of the Senior Junior Loan Documents; provided, however, the circumstances giving rise to a default or Event of Default under any Subordinate Junior Loan Documents may independently give rise to a default or Event of Default under the Senior Junior Loan Documents as provided for therein.

Section 3. APPROVAL OF LOANS AND LOAN DOCUMENTS.

(a) Junior Lenders. Each Junior Lender hereby acknowledges as to itself only that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Senior Loan and each of the Junior Loans (other than the Junior Loan held by such Junior Lender) and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Senior Loan Documents and each of the Junior Loan Documents (other than the Junior Loan Documents relating to the Junior Loan held by such Junior Lender); (ii) the execution, delivery and performance of the Senior Loan Documents and each of the Junior Loan Documents (other than the Junior Loan Documents relating to the Junior Loan held by such Junior Lender) will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Junior Loan Documents in connection with the Junior Loan held by such Junior Lender; (iii) none of Senior Lender nor the other Junior Lender is under any obligation or duty to, nor has Senior Lender nor the other Junior Lender represented that any Person will, see to (a) the application of the proceeds of the Senior Loan and (b) the application of the proceeds of any Junior Loan (other than the Junior Loan held by such Junior Lender); (iv) (A) any application or use of the proceeds of the Senior Loan for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Senior Loan Documents and (B) any application or use of the proceeds of any Junior Loan (other than the Junior Loan held by such Junior Lender) for purposes other than those provided in the Junior Loan Documents in connection with such Junior Loan shall not affect, impair or defeat the terms and provisions of this Agreement or the related Junior Loan Documents; and (v) any conditions precedent to such Junior Lender's consent to the other Junior Loans as set forth in such Junior Lender's Junior Loan Documents or any other agreements with the applicable Junior Borrower, as they apply to the other Junior Loan Documents or the making of the other Junior Loans, have been either satisfied or waived.

(b) Senior Lender. Senior Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Junior Loans and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Junior Loan Documents; (ii) the execution,

delivery and performance of the Junior Loan Documents (including that neither (A) the grant of a first priority perfected security interest by Mezzanine A Borrower to Mezzanine A Lender in all of the ownership interests in Borrower, nor (B) the grant of a first priority perfected security interest by Mezzanine B Borrower to Mezzanine B Lender in all of the ownership interests in Mezzanine A Borrower nor (C) the grant of a first priority perfected security interest by Mezzanine C Borrower to Mezzanine C Lender in all of the ownership interests in Mezzanine B Borrower) will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Senior Loan Documents; (iii) none of the Junior Lenders are under any obligation or duty to, nor has any Junior Lender represented that it will, see to the application of the proceeds of the Junior Loans; (iv) any application or use of the proceeds of the Junior Loans for purposes other than those provided in the Junior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Junior Loan Documents; (v) any conditions precedent to Senior Lender's consent to the Junior Loans as set forth in the Senior Loan Documents or any other agreements with any Borrower Party, as they apply to the Junior Loan Documents or the making of the Junior Loans, have been either satisfied or waived; and (vi) any Junior Lender may obtain title to its respective Separate Collateral subject to the terms and conditions set forth in Section 6 and Senior Lender consents thereto.

Section 4. REPRESENTATIONS AND WARRANTIES.

(a) Senior Lender. Senior Lender hereby represents and warrants as follows:

(i) Exhibit A attached hereto and made a part hereof is a true, correct and complete listing of the Senior Loan Documents (including all amendments, modifications, replacements, restatements, and supplements thereof) as of the date hereof. To Senior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Senior Loan Documents, including, without limitation, any breach of any of the representations and warranties made by any Borrower Party in the Senior Loan Documents. The Senior Loan has been fully funded.

(ii) Senior Lender is the legal and beneficial owner of the entire Senior Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(iii) There are no conditions precedent to the effectiveness of this Agreement with respect to Senior Lender that have not been satisfied or waived.

(iv) Senior Lender has, independently and without reliance upon Junior Lenders and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(v) Senior Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Senior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Senior Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Senior Lender enforceable against Senior Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws and (y) general principles of equity which may apply regardless of whether a proceeding is brought at law or in equity.

(viii) To Senior Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Senior Lender of this Agreement or consummation by Senior Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Senior Lender, (w) to Senior Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any material contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Senior Lender is a party or to which any of its properties are subject, (x) to Senior Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Senior Lender pursuant to the terms of any such material contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument, (y) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Senior Lender has knowledge against, or binding upon, Senior Lender or upon any of the securities, properties, assets, or business of Senior Lender or (z) to Senior Lender's knowledge, constitute a violation by Senior Lender of any statute, law or regulation that is applicable to Senior Lender.

(x) The Senior Loan is not cross-defaulted with any other loan, including each Junior Loan. The Premises do not secure any other loan from Senior Lender to any Borrower Party or any other Person other than the Senior Loan.

(b) Junior Lenders. Each Junior Lender hereby severally represents and warrants, for and with respect to itself only, as follows:

(i) There are no conditions precedent to the effectiveness of this Agreement with respect to such Junior Lender that have not been satisfied or waived.

(ii) Such Junior Lender has, independently and without reliance upon Senior Lender or the other Junior Lender and based on such documents and information as it has

deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(iii) Such Junior Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(iv) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of such Junior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(v) Such Junior Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of such Junior Lender enforceable against such Junior Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (y) general principles of equity which may apply regardless of whether a proceeding is brought at law or in equity.

(vi) To the knowledge of such Junior Lender, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by such Junior Lender of this Agreement or consummation by such Junior Lender of the transactions contemplated by this Agreement.

(vii) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of such Junior Lender, (w) to such Junior Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any material contract, mortgage, lease, bond, indenture, agreement, or other instrument to which such Junior Lender is a party or to which any of its properties are subject, (x) to such Junior Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of such Junior Lender pursuant to the terms of any such material contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument (provided, however, that such Junior Lender and any holder of any interest in a Junior Loan shall have the right to grant a lien, charge, encumbrance, claim or security interest in the Junior Loan held by such Junior Lender or any portion thereof to a Loan Pledgee as contemplated by the provisions of Section 16), (y) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency or governmental or regulatory body of which such Junior Lender has knowledge against, or binding upon, such Junior Lender or upon any of the securities, properties, assets, or business of such Junior Lender or (z) to such Junior Lender's knowledge, constitute a violation by such Junior Lender of any statute, law or regulation that is applicable to such Junior Lender.

(c) Mezzanine A Lender. Mezzanine A Lender hereby represents and warrants as follows:

(i) Exhibit B attached hereto and made a part hereof is a true, correct and complete listing of all of the Mezzanine A Loan Documents as of the date hereof. To Mezzanine A Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Mezzanine A Loan Documents.

(ii) Mezzanine A Lender is the legal and beneficial owner of the entire Mezzanine A Loan free and clear of any lien, security interest, option or other charge or encumbrance, other than any lien or security interest granted to any Loan Pledgee as contemplated by the provisions of Section 16.

(iii) The Mezzanine A Loan is not cross-defaulted with any loan other than the Senior Loan. The Premises do not secure any loan from Mezzanine A Lender to Mezzanine A Borrower or any other Affiliate of Borrower.

(iv) Mezzanine A Lender is a "Qualified Transferee" as such term is defined herein other than solely as a result of Mezzanine A Lender being (x) expressly named in such definition, (y) an Affiliate of a Person that is a "Qualified Transferee" solely as a result of being expressly named in such definition, or (z) Controlled by, Controlling or under common Control with any of the entities described in clause (i) of such definition.

(d) Mezzanine B Lender. Mezzanine B Lender hereby represents and warrants as follows:

(i) Exhibit C attached hereto and made a part hereof is a true, correct and complete listing of all of the Mezzanine B Loan Documents as of the date hereof. To Mezzanine B Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Mezzanine B Loan Documents.

(ii) Mezzanine B Lender is the legal and beneficial owner of the entire Mezzanine B Loan free and clear of any lien, security interest, option or other charge or encumbrance, other than any lien or security interest granted to any Loan Pledgee (as hereinafter defined) as contemplated by the provisions of Section 16.

(iii) The Mezzanine B Loan is not cross-defaulted with any loan other than the Senior Loan and the Mezzanine A Loan. The Premises do not secure any loan from Mezzanine B Lender to Mezzanine B Borrower or any other Affiliate of Borrower.

(iv) Mezzanine B Lender is a "Qualified Transferee" as such term is defined herein other than solely as a result of Mezzanine B Lender being (x) expressly named in such definition, (y) an Affiliate of a Person that is a "Qualified Transferee" solely as a result of being expressly named in such definition, or (z) Controlled by, Controlling or under common Control with any of the entities described in clause (i) of such definition.

(e) Mezzanine C Lender. Mezzanine C Lender hereby represents and warrants as follows:

(i) Exhibit D attached hereto and made a part hereof is a true, correct and complete listing of all of the Mezzanine C Loan Documents as of the date hereof. To Mezzanine C Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Mezzanine C Loan Documents.

(ii) Mezzanine C Lender is the legal and beneficial owner of the entire Mezzanine C Loan free and clear of any lien, security interest, option or other charge or encumbrance, other than any lien or security interest granted to any Loan Pledgee (as hereinafter defined) as contemplated by the provisions of Section 16.

(iii) The Mezzanine C Loan is not cross-defaulted with any loan other than the Senior Loan, the Mezzanine A Loan and the Mezzanine B Loan. The Premises do not secure any loan from Mezzanine C Lender to Mezzanine C Borrower or any other Affiliate of Borrower.

(iv) Mezzanine C Lender is a "Qualified Transferee" as such term is defined herein other than solely as a result of Mezzanine C Lender being (x) expressly named in such definition, (y) an Affiliate of a Person that is a "Qualified Transferee" solely as a result of being expressly named in such definition, or (z) Controlled by, Controlling or under common Control with any of the entities described in clause (i) of such definition.

Section 5. TRANSFER OF JUNIOR LOANS OR SENIOR LOAN.

(a) Subject to the terms and conditions of this Section 5, each Junior Lender shall have the right to Transfer (A) up to and including forty-nine percent (49%) of its interests in its respective Junior Loan to any Person (provided such transferring Junior Lender shall continue to Control the management of the applicable Junior Loan, which Control may be subject to consent or voting requirements on customary "major decisions"), and (B) any interest in its respective Junior Loan to a Qualified Transferee, in each case without the consent of Senior Lender or any other Junior Lender and without a Rating Agency Confirmation. No individual Junior Lender shall Transfer more than forty-nine percent (49%) of its interests in its respective Junior Loan (when aggregated with all prior Transfers of such Junior Loan by such Junior Lender to Persons that are not Qualified Transferees) unless either (i) such Transfer is to a Qualified Transferee; (ii) if such Transfer is not to a Qualified Transferee, a Rating Agency Confirmation has been given with respect to such Transfer and, in the case of a Transfer by Subordinate Junior Lender, Senior Junior Lender shall have consented to such Transfer, which consent shall not be unreasonably withheld, conditioned or delayed, in each of which case the related transferee shall thereafter be deemed to be a "Qualified Transferee" for all purposes of this Agreement; or (iii) such Transfer complies with Section 6, Section 14 or Section 16. Each transferee of a direct interest in a Junior Loan (for the avoidance of doubt, excluding participants, Loan Pledgees (prior to its realization on the pledged Junior Loan)) must assume in writing the obligations of the applicable Junior Lender hereunder from and after the date of such Transfer and agree to be bound by the terms and provisions hereof (and in such event the transferring

Person or Persons shall be released from obligations hereunder accruing after the date of such assumption with respect to the transferred interest). Notwithstanding any such Transfer or subsequent Transfer by a transferee of a Junior Lender, each Senior Junior Loan and the Senior Junior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the applicable Subordinate Junior Loan and the related Subordinate Junior Loan Documents in accordance with the terms and provisions of this Agreement. Each transferee (other than a Loan Pledgee (prior to its realization on the pledged Junior Loan), a participant in connection with a participation of a portion of the applicable Junior Loan), shall also remake for the benefit of Senior Lender and the other Junior Lenders each of the representations and warranties contained herein made by the transferring Junior Lender as of the date of Transfer (except (1) those made in Section 4(c)(ii), Section 4(d)(ii) or Section 4(e)(ii), as applicable, unless such transferee assumes the entire applicable Junior Loan, (2) in the case of a transferee that holds, in the aggregate after giving effect to such Transfer, less than forty-nine percent (49%) of its interests in the applicable Junior Loan (unless if after giving effect to such Transfer, more than forty-nine percent (49%) of such Junior Lender's interest in such Junior Loan has been Transferred when aggregated with all prior Transfers of such Junior Loan by such Junior Lender), the representation and warranty in Section 4(c)(iv), Section 4(d)(iv) or Section 4(e)(iv), as applicable, (3) those made in the first sentence of Section 4(c)(i), Section 4(d)(i) or Section 4(e)(i), respectively, may be qualified to such transferee's knowledge, and (4) to the extent those made in Section 4(b)(iv), Section 4(b)(v), Section 4(b)(vi) and Section 4(b)(vii) refer to the execution and delivery of this Agreement, shall be deemed to refer to the execution and delivery of each document or instrument by which such Person assumed its obligations under this Agreement), except to the extent that such transferee has knowledge that a default exists under its Junior Loan, in which case, such transferee shall describe the default. A Transfer of any interest in a Junior Loan to Borrower or any Junior Borrower, or an Affiliate or Broad Affiliate of Borrower or any Junior Borrower that purports in writing not to be subject to the terms and conditions of Section 19 hereof, shall be void unless such Transfer results in the substantially simultaneous extinguishment of such Junior Loan.

(b) Within five (5) Business Days after a Transfer of more than forty-nine percent (49%) of its interests in the applicable Junior Loan, the applicable Junior Lender shall provide to Senior Lender, the other Junior Lenders, and, if any Certificates are outstanding and rated by any Rating Agency, to the Rating Agencies, a certification that such Transfer will be made in accordance with this Section 5, such certification to include the name and contact information of the applicable transferee under such Transfer. Notwithstanding the foregoing, the requirements of this Section 5(b) shall not apply to the Transfer of the Mezzanine C Loan to an SLG Qualified Transferee, provided such Transfer is consummated within ten (10) Business Days from the Closing Date.

(c) Each Junior Lender acknowledges that (i) any Rating Agency Confirmation or approval by any other Junior Lender may be granted or denied by the Rating Agencies or such other Junior Lender in its sole and absolute discretion (unless otherwise specified herein), and (ii) that such Rating Agencies may charge customary fees in connection with any such action, which shall be paid by the transferring Junior Lender. Senior Lender and Senior Junior Lender, if applicable, agrees to use commercially reasonable efforts to assist the transferring Junior Lender in promptly obtaining any such Rating Agency Confirmation, provided that the transferring Junior Lender shall reimburse Senior Lender and Senior Junior

Lender, if applicable, for any reasonable out-of-pocket costs and expenses incurred by Senior Lender and Senior Junior Lender, if applicable, in connection therewith.

(d) Senior Lender may, from time to time, in its sole discretion Transfer all or any part of the Senior Loan or any interest therein, provided that any direct transferee (other than (x) in connection with a Securitization, provided the Transfer is made subject to this Agreement or (y) a participant, a pledgee or a counterparty under a repurchase agreement prior to realization under the applicable pledge or repurchase agreement) assumes in writing the obligations of Senior Lender hereunder accruing from and after such Transfer and (except in connection with a Securitization) agrees to be bound by the terms and provisions hereof, and notwithstanding any such Transfer or subsequent Transfer by a transferee of Senior Lender, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the Junior Loans and the Junior Loan Documents in accordance with the terms and provisions of this Agreement. Notwithstanding the foregoing, but subject to the following sentence, Senior Lender may, at any time, and from time to time, in its sole discretion, grant, issue or sell participations, sub-participations or other indirect, contractual interests in the Senior Loan to any Person. Senior Lender may not Transfer any legal or beneficial interest in the Senior Loan to (1) an Embargoed Person or (2) Borrower or to any Broad Affiliate of Borrower (including without limitation Mezzanine A Borrower, Mezzanine B Borrower, Mezzanine C Borrower or any respective Broad Affiliate thereof), provided, however, that (i) the aforesaid prohibition in clause (2) shall not apply to a Transfer in accordance with the terms of Section 14 below by Senior Lender to any Junior Lender, and (ii) notwithstanding the aforesaid prohibition in clause (2), any Borrower or Broad Affiliate of Borrower may purchase any Certificates issued in connection with a Securitization of any part of the Senior Loan and no such purchase by Borrower or Broad Affiliate of Borrower shall cause the trustee of any Securitization of the Senior Loan or any portion thereof (or the Securitization Vehicle holding the Senior Loan or any portion thereof) to be deemed to be a Broad Affiliate of Borrower (but in no event shall Borrower or any Broad Affiliate of Borrower serve as the “controlling holder”, “operating advisor” or in a similar capacity with respect to the Senior Loan or be appointed as a special servicer for the Senior Loan). Senior Lender shall use commercially reasonable efforts to give each Junior Lender written notice of any Transfer of the Senior Loan within five (5) Business Days following each such Transfer, provided that no notice shall be required in connection with the Transfers made to a depositor and by such depositor into a securitization trust in connection with the Securitization of the Senior Loan or in connection with Transfers made thereafter of Certificates issued pursuant to such Securitization. For the avoidance of doubt, Senior Lender shall not Transfer any interest (including any participation therein) in the Senior Loan to Borrower, an Affiliate Holder or to a Broad Affiliate of Borrower other than the Certificates, and such Certificates shall be subject to Section 19 hereof.

(e) If more than one Person shall be a Junior Loan Holder with respect to a Junior Loan, the direct holders of more than fifty percent (50%) of the principal amount of such Junior Loan not then held by an Affiliate Holder (unless the applicable Co-Lender Agreement among the applicable Junior Loan Holders provides a different designation mechanism among Non-Affiliate Holders, which different mechanism shall be specified in such notice and upon which Senior Lender and the other Junior Lender shall be entitled to rely upon without independent investigation) shall designate by written notice to Senior Lender and the other Junior Lender one of such Persons (or a servicer on their behalf) (a “**Directing Junior Lender**”)

to act on behalf of all such Junior Loan Holders (it being understood that in no event may an Affiliate Holder be a Directing Junior Lender). Except as otherwise agreed in writing by Senior Lender and Junior Lenders, the Directing Junior Lender shall have the sole right to receive any notices which are required to be given or which may be given to the Junior Lender holding the applicable Junior Loan pursuant to this Agreement and to exercise the rights and powers given to the Junior Lender holding the applicable Junior Loan hereunder, including any approval rights of the Junior Lender holding the applicable Junior Loan; provided, that until a Directing Junior Lender has been so designated, the last Person known to Senior Lender and the other Junior Lender to hold more than fifty percent (50%) of the portion of the principal amount of the applicable Junior Loan not then held by Affiliate Holders shall be deemed to be the Directing Junior Lender for such Junior Loan. Once a Directing Junior Lender has been designated hereunder with respect to a Junior Loan, Senior Lender and the other Junior Lender shall be entitled to rely on such designation until it has received written notice from the holders of more than fifty percent (50%) of the principal amount of the applicable Junior Loan not then held by Affiliate Holders of the designation of a different Person to act as the Directing Junior Lender for such Junior Loan (unless the applicable Co-Lender Agreement among the applicable Junior Loan Holders provides a different designation mechanism among Non-Affiliate Holders, which different mechanism shall be specified in such notice and upon which Senior Lender and the other Junior Lender shall be entitled to rely upon without independent investigation). Notwithstanding any provision of this Section 5(e) to the contrary, each applicable Junior Loan Holder shall be subject to the rights and restrictions contained in Section 5(a), (b) and (c) with respect to such Person's interest in the related Junior Loan. A Directing Junior Lender shall not be deemed to constitute an Affiliate Holder solely as a result of the fact that such Directing Junior Lender is acting on behalf of both Affiliate Holders and Non-Affiliate Holders so long as such Directing Junior Lender is not acting in violation of the applicable provisions of Section 5 and Section 19 hereof.

(f) If more than one Person shall hold a direct interest in the Senior Loan, the holder(s) of more than fifty percent (50%) of the principal amount of the Senior Loan (unless the applicable Co-Lender Agreement among the holders of the Senior Loan provides a different designation mechanism, which different mechanism shall be specified in such notice and upon which each Junior Lender shall be entitled to rely upon without independent investigation) shall designate by written notice to each Junior Lender one of such Persons (the "**Directing Senior Lender**") to act on behalf of all such Persons holding an interest in the Senior Loan. As of the date hereof, the Directing Senior Lender is JPMorgan. Except as otherwise agreed in writing by each Junior Lender, the Directing Senior Lender shall have the sole right to receive any notices which are required to be given or which may be given to Senior Lender pursuant to this Agreement and to exercise the rights and powers given to Senior Lender hereunder, including any approval rights of Senior Lender; provided, that until the Directing Senior Lender has been so designated, the last Person known to each Junior Lender to hold more than a fifty percent (50%) direct interest in the Senior Loan shall be deemed to be the Directing Senior Lender. Once the Directing Senior Lender has been designated hereunder, each Junior Lender shall be entitled to rely on such designation until it has received written notice from the holder(s) of more than fifty percent (50%) of the principal amount of the Senior Loan of the designation of a different Person to act as the Directing Senior Lender (unless the applicable Co-Lender Agreement among the holders of the Senior Loan provides a different designation mechanism, which different mechanism shall be specified in such notice and upon which each Junior Lender

shall be entitled to rely upon without independent investigation). Notwithstanding any provision of this Section 5(f) to the contrary, each Person holding an interest in the Senior Loan shall be subject to the rights and restrictions contained in Section 5(d) with respect to such Person's interest in the Senior Loan.

Section 6. FORECLOSURE OF SEPARATE COLLATERAL.

(a) Subject to Section 19 hereof (which shall control in the event of any inconsistency between the provisions of this Section 6 and the provisions of Section 19), no Junior Lender shall complete a Realization Event without (i) a Rating Agency Confirmation and (ii) the approval of Senior Junior Lender (not to be unreasonably withheld, conditioned or delayed), in each case, unless (1) the transferee of the title to such Equity Collateral is Junior Lender or a Qualified Transferee (or a wholly owned subsidiary of an entity that is a Qualified Transferee pursuant to clause (iii)(E) of the definition thereof), (2) the Premises will be managed by one or more Qualified Managers selected by the applicable Junior Lender (or the transferee of its Equity Collateral) within thirty (30) days after the Realization Event, and (3) not later than ten (10) Business Days following completion of such Realization Event, all monetary defaults and monetary Events of Default that are uncured or unwaived immediately prior to the completion of such Realization Event that have been identified by Senior Lender and Senior Junior Lender (as applicable) to the applicable Junior Lender shall be cured by such Junior Lender (or the transferee of its Equity Collateral), other than repayment in full of the Senior Loan or any Senior Junior Loan at the applicable maturity date; it being acknowledged and agreed that notwithstanding anything to the contrary contained herein, it shall not be a condition precedent to commencing or completing a Realization Event that (x) any default under the Senior Loan or any Senior Junior Loan which remains outstanding as of the date of the Realization Event be cured by Junior Lender or such transferee or (y) Junior Lender has exercised any right hereunder to purchase the Senior Loan and any Senior Junior Loan; provided, however, that nothing in this sentence is intended as (i) a waiver by Senior Lender or Senior Junior Lender of any such default or of any rights or remedies Senior Lender or Senior Junior Lender may have as a result of such default or otherwise under the Senior Loan Documents or Senior Junior Loan Documents, at law or in equity or (ii) any agreement on the part of Senior Lender or Senior Junior Lender to extend the term of the Senior Loan or Senior Junior Loan or otherwise modify any of the Senior Loan Documents or the Senior Junior Loan Documents in any respect except as expressly set forth herein, including, without limitation, in Section 6(c) below. The transferee of the Equity Collateral in connection with any such foreclosure or other realization may replace any Independent Director relating to such Equity Collateral that is an individual with another Person satisfying the requirements of an Independent Director under the applicable Senior Loan Documents or the Senior Junior Documents, as applicable. Additionally, the transferee of the Equity Collateral shall deliver an Additional Insolvency Opinion to Senior Lender (and, in the case of a transferee of Equity Collateral for a Subordinate Junior Loan, to Senior Junior Lender) within ten (10) Business Days following the Realization Event. The applicable Junior Lender shall provide notice of the Realization Event and a certificate from such Junior Lender certifying that all applicable conditions set forth in this Section 6(a) will be satisfied to Senior Lender, Senior Junior Lender and, after a Securitization, the Rating Agencies upon the consummation of any Realization Event, except with respect to conditions that by the terms of this Section 6 are to be satisfied after the Realization Event, as to which such Junior Lender shall provide one or more additional certificates promptly following the date or dates on which such conditions are

respectively satisfied in accordance herewith. Senior Lender and Senior Junior Lender may request reasonable evidence that the requirements of Section 6(a)(ii)(1) and (2) have been satisfied. Regardless of whether or not a Realization Event results in the explicit release from future liability of any guarantor, indemnitor, pledgor, or other obligor (each, a “**Third Party Obligor**”) under the Senior Loan or any Senior Junior Loan, if any, or any other guaranty, pledge or indemnity that constitutes a Senior Loan Document or Senior Junior Loan Document as of the date hereof or under any other guaranty, pledge or indemnity which may constitute a Senior Loan Document or Senior Junior Loan Document that is entered into after the Closing Date and has been approved by the applicable Junior Lender (each, a “**Third Party Agreement**”), the applicable Junior Lender (or the transferee of its Equity Collateral) shall, as a condition precedent to completing any such Realization Event (other than solely obtaining the appointment of a receiver or similar agent with respect to the Equity Collateral), cause one or more Supplemental Third Party Obligors to execute and deliver at least two (2) Business Days prior to such Realization Event to each of Senior Lender and Senior Junior Lender, if any, a substitute Third Party Agreement, in each case in a form substantially similar to the original Third Party Agreement, pursuant to which such Supplemental Third Party Obligors shall guaranty only the Future Third Party Obligations (and only to the extent arising from and after the date of such Realization Event), provided, however, that in the event such Junior Loan is subject to multiple participation interests or co-lender interests, one or more Participating Holders may deliver separate substitute Third Party Agreements, which substitute Third Party Agreements (I) in the aggregate shall guaranty one hundred percent (100%) of the Future Third Party Obligations, and (II) shall be on a several basis limiting the respective liability of each Supplemental Third Party Obligor under such substitute Third Party Agreement to a pro rata portion (based on the percentage interest held by such Participating Holder (as such percentage interest of such Participating Holder may be increased by an amount equal to the portion identified in such substitute Third Party Agreement as the percentage interest in the Junior Loan held by each applicable Covered Holder, if any, being covered by the substitute Third Party Agreement being delivered by such Participating Holder) in such Junior Loan as of the date of such Transfer) of the Future Third Party Obligations from respective Supplemental Third Party Obligors. Notwithstanding anything to the contrary in the foregoing, the requirement to provide a substitute Third Party Agreement with respect to the applicable Environmental Indemnity shall be waived to the extent a Junior Lender (or the transferee of its Equity Collateral) obtains and maintains an Environmental Liability Policy in form and substance reasonably satisfactory to Senior Lender and Senior Junior Lender (as applicable) and from an insurance company that is reasonably satisfactory to Senior Lender and Senior Junior Lender (as applicable).

(b) Subject to Section 19 hereof, nothing contained herein shall limit or restrict the right of any Junior Lender to exercise its rights and remedies, at law, in equity or otherwise, in order to realize on any of its respective Separate Collateral in accordance with this Agreement that is not Equity Collateral and to apply the proceeds therefrom as it deems appropriate in its discretion, including exercising any remedy against any guarantor or indemnitor (each a “**Junior Guarantor**”) pursuant to any guaranty or indemnity granted to such Junior Lender (including without limitation such Junior Lender’s Guaranty and/or Environmental Indemnity) as additional credit support for the obligations under the related Junior Loan Documents (a “**Guaranty Claim**”); provided, however, each Junior Lender agrees that it shall not pursue the enforcement of any judgments against Junior Guarantor who is a guarantor of the Senior Loan or any Senior Junior Loan (such Junior Guarantor, a “**Common Guarantor**”) (but

shall not be precluded from obtaining a judgment in any event) pursuant to this Section 6(b) unless (i) it has delivered to Senior Lender (and, in the case of Subordinate Junior Lender, to Senior Junior Lender) prior written notice thereof, and (ii) if any Senior Loan Liabilities or Senior Junior Loan Liabilities, as applicable, are then outstanding, the proceeds of any such enforcement are promptly turned over:

(1) to Senior Lender (to be held in trust for the Junior Lender turning over such proceeds and to be returned or applied by Senior Lender to the Senior Loan Liabilities as described in this clause (1) below) if (A) Senior Lender is simultaneously exercising any rights and remedies that it may have against such Common Guarantor under any guaranty granted to Senior Lender as additional collateral to secure the obligations under the Senior Loan Documents with respect to a claim against such Common Guarantor based on the same action, omission, event or occurrence which such Junior Lender's claim against such Common Guarantor is based, or (B) Senior Lender has notified such Junior Lender that Senior Lender has a claim (or will have a claim, if any such claim is contingent on the establishment of the amount of Senior Lender's losses) against such Common Guarantor based on the same action, omission, event or occurrence which such Junior Lender's claim against such Common Guarantor is based and Senior Lender commences litigation of such claim (I) within forty-five (45) Business Days of such notice to such Junior Lender with respect to claims that are full recourse events under the Guaranty or (II) with respect to claims that are contingent on the establishment of the amount of Senior Lender's losses, the later of forty-five (45) Business Days of (x) such notice and (y) the date Senior Lender establishes the amount of the losses on which such claim is to be based (and if Senior Lender is successful in its claim against such Common Guarantor and fails to recover the amount of such claim from Common Guarantor, then Senior Lender shall have the right to apply any amounts held pursuant to this Section 6(b)(1) to the Senior Loan Liabilities provided if such claim is unsuccessful or paid by such Common Guarantor, Senior Lender shall promptly return any amounts held to the Junior Lender which turned over such amounts except if such Junior Lender is a Subordinate Junior Lender, in which case Senior Lender shall instead turn over such amounts to Senior Junior Lender pursuant to subclause (2) below), provided in each case, that, subject to Section 11(c), such Junior Lender is subrogated to such claim of Senior Lender; or

(2) if Senior Lender is not entitled to the same pursuant to subclause (1) above or no Senior Loan Liabilities are outstanding, then, solely in the case of a Subordinate Junior Lender, to the most senior Senior Junior Lender (to be held in trust for the Junior Lender turning over such proceeds and to be returned or applied by such Senior Junior Lender to the Senior Junior Loan Liabilities as described in this clause (2) below) if (A) such Senior Junior Lender is simultaneously exercising any rights and remedies that it may have against such Common Guarantor under any

guaranty granted to such Senior Junior Lender as additional collateral to secure the obligations under the Senior Junior Loan Documents with respect to a claim against such Common Guarantor based on the same action, omission, event or occurrence on which such Junior Lender's claim against such Common Guarantor is based, or (B) such Senior Junior Lender has notified such Subordinate Junior Lender that such Senior Junior Lender has a claim (or will have a claim, if any such claim is contingent on the establishment of the amount of Senior Junior Lender's losses) against such Common Guarantor based on the same action, omission, event or occurrence on which such Senior Junior Lender's claim against such Common Guarantor is based and such Senior Junior Lender commences litigation of such claim (I) within forty-five (45) Business Days of such notice to Subordinate Junior Lender with respect to claims that are full recourse events under the Guaranty or (II) with respect to claims that require the payment of losses, the later of forty-five (45) Business Days (x) of such notice and (y) the date Senior Junior Lender establishes the amount of the losses on which such claim is to be based (and if such Senior Junior Lender is successful in its claim against such Common Guarantor and fails to recover the amount of such claim from Common Guarantor, then such Senior Junior Lender shall have the right to apply any amounts held pursuant to this Section 6(b)(2) to the Senior Junior Loan Liabilities provided if such claim is unsuccessful or paid by such Common Guarantor, such Senior Junior Lender shall promptly return any amounts held to the Subordinate Junior Lender which turned over such amounts), provided in each case, that, subject to Section 11(c), that, such Subordinate Junior Lender is subrogated to such claim of such Senior Junior Lender.

If neither Senior Lender nor any Senior Junior Lender are entitled to such proceeds pursuant to clauses (1) and (2) above, a Subordinate Junior Lender shall not be precluded from enforcing such judgment and obtaining the proceeds thereof.

Except to the extent that a Junior Lender becomes subrogated in accordance with the provisions set forth in clauses (b)(1) and (b)(2) above, any right of payment of a Junior Lender under a Guaranty Claim that is required to be turned over to Senior Lender or Senior Junior Lender pursuant to this Section 6(b) shall be subject and subordinate as provided in this Section 6(b) in all respects to the rights and claims of Senior Lender (and Senior Junior Lender, as applicable) against the applicable Common Guarantor.

(c) In the event a Junior Lender or any Qualified Transferee obtains title to the related Equity Collateral, Senior Lender and each applicable Senior Junior Lender acknowledges and agrees that (i) any transfer, acquisition or assumption fee in the Senior Loan Agreement (including, without limitation, any fees required pursuant to Section 5.2.10(e) thereof) and each applicable Senior Junior Loan Agreement shall be waived with respect to such Transfer, provided, however, that all reasonable, out-of-pocket expenses incurred by Senior Lender and by Senior Junior Lender directly in connection with the exercise of its review and approval rights with respect to any such Transfer shall be paid by such Junior Lender or such

Qualified Transferee, (ii) any such Transfer shall not constitute a breach or default under the Senior Loan Documents or any Senior Junior Loan Documents, (iii) Senior Lender and each applicable Senior Junior Lender shall be deemed to have consented to (A) the Transfer of such Equity Collateral, (B) the admission of such Junior Lender or Qualified Transferee as a new member, partner or other equity owner, as the case may be, of each Person whose equity interests previously constituted a part of such Equity Collateral, and (C) the amendment of the Senior Loan Documents and the Senior Junior Loan Documents to allow direct or indirect equity transfers in Borrower consistent with those permitted under this Agreement and to otherwise reflect changes to the existing permitted Affiliate transfer provisions contained therein to reflect the organizational structure of such Junior Lender or such Qualified Transferee, as applicable, and such Person's Affiliates in lieu of that of each Borrower Party, Senior Junior Borrower, if applicable, and their Affiliates and to refer thereafter to Junior Lender or such Qualified Transferee, as applicable, and such Person's respective Affiliates instead of each Borrower Party, Senior Junior Borrower, if applicable, or their respective Affiliates, provided that, in each case, the conditions in Section 6(a) are met, to the extent applicable and (iv) from and after the date of such Transfer with respect to (x) acts or omissions first occurring on or after the date of such Transfer or (y) ongoing covenants or updated representations, the term "Guarantor" when used throughout the Senior Loan Documents and Senior Junior Loan Documents shall be deemed to refer only to the Person(s) that has actually executed any applicable replacement Third Party Agreements. Senior Lender and each applicable Senior Junior Lender also acknowledge and agree that neither the Senior Loan nor any Senior Junior Loan, if applicable, will be or become due solely as a result of such Transfer or any other completion of a Realization Event in accordance with the terms and conditions of this Agreement, and that such Person will not impose any fees or other charges, or unreasonable delays in connection with such Transfer or such other completion of a Realization Event.

(d) Notwithstanding anything to the contrary in the Senior Loan Documents or the Senior Junior Loan Documents, in the event that a Junior Lender or Qualified Transferee forecloses or otherwise realizes on any Equity Collateral, thereafter such Junior Lender or Qualified Transferee or its designee, in its capacity as the managing member or general partner, as applicable, of any Borrower Party (or any Junior Borrower), shall have the right without the consent of any Person, to amend the partnership or operating agreement of such Borrower Party (or such Junior Borrower) and any general partner or managing member of such Borrower Party (or such Junior Borrower) to expressly permit any transfers which are expressly permitted under the Senior Loan Documents and the Senior Junior Loan Documents as the same are modified in accordance with clause (c) above. For the avoidance of doubt, any amendment to organizational documents permitted by Section 6(c) above or this Section 6(d) shall be subject to compliance with the Special Purpose Entity requirements contained in the Senior Loan Documents and, as applicable in the Junior Loan Documents.

(e) Nothing contained in Section 5(a) or this Section 6 is intended (i) to limit any Loan Pledgee's right under its financing documents with any Junior Lender to foreclose against such Junior Lender, provided that such Loan Pledgee complies with the applicable provisions of Section 16, or (ii) if any such Loan Pledgee has foreclosed under its financing documents as aforesaid, to limit such Loan Pledgee's right to foreclose against the applicable Junior Borrower's interest in the related Separate Collateral, provided that Loan Pledgee complies with the applicable provisions of Section 5 and this Section 6. For the avoidance of

doubt a Loan Pledgee, in the event that a Loan Pledgee becomes a Junior Lender, must comply with the provisions of this Section 6 regarding Third Party Obligors.

(f) In the event of a Transfer of Equity Collateral pursuant to the provisions of Section 6(a), the transferee of such Equity Collateral shall (i) have the right to cure any non-monetary default under the Senior Loan or the applicable Senior Junior Loan that remains uncured as of the date of such Realization Event and was not susceptible to cure without foreclosure of the Equity Collateral, so long as (A) such transferee is continuously and diligently pursuing a cure of such non-monetary default, (B) such default is not caused by a Proceeding of any Borrower Party, and (C) during the period in which such transferee is pursuing such cure in accordance with this Section 6(f), there is no material impairment to the value, use or operation of the Premises taken as a whole as reasonably determined by Senior Lender or Senior Junior Lender, as applicable, in good faith as a result of such non-monetary default (provided that, (I) nothing in this Section 6(f) is intended as (x) a waiver by Senior Lender or Senior Junior Lender, as applicable, of any such Event of Default or of any rights or remedies Senior Lender or Senior Junior Lender, as applicable, may have as a result of such Event of Default or otherwise under the Senior Loan Documents or the Senior Junior Loan Documents, as applicable, at law or in equity or (y) any agreement on the part of Senior Lender or Senior Junior Lender, as applicable, to extend the term of the Senior Loan or Senior Junior Loan, as applicable, or otherwise modify any of Senior Loan Documents or Senior Junior Loan Documents, as applicable, in any respect except as expressly set forth herein, and (II) there shall be no further cure period with respect to any subsequent occurrence of any such defaults on the part of such transferee after the date of the Realization Event except as expressly set forth in the Senior Loan Documents or Senior Junior Loan Documents, as applicable), and (ii) have no obligation to cure any non-monetary default under the Senior Loan or Senior Junior Loan, as applicable, which (X) remains uncured as of the date of such Realization Event, and (Y) is not susceptible of being cured by such transferee notwithstanding such efforts as Persons of extraordinary prudence would exercise with regard to very important affairs of their own, provided that there is no material impairment to the value, use or operation of the Premises taken as a whole as reasonably determined by Senior Lender or Senior Junior Lender, as applicable, in good faith and provided, further, that there shall be no further waiver of any subsequent occurrence of any such defaults on the part of such transferee after the date of the Realization Event. This Section 6(f) shall survive the termination of this Agreement pursuant to Section 18(m) with respect to any Junior Lender resulting from a Transfer of title of such Junior Lender's Equity Collateral to such Junior Lender.

Section 7. NOTICE OF RATING CONFIRMATION.

Each Junior Lender promptly shall notify Senior Lender and each other Junior Lender of any intended action relating to its respective Junior Loan that requires Rating Agency Confirmation pursuant to this Agreement and shall reasonably cooperate with Senior Lender in obtaining such Rating Agency Confirmation, and Senior Lender shall cooperate at no out-of-pocket expense to Senior Lender with such Junior Lender in obtaining such Rating Agency Confirmation. Senior Lender promptly shall notify each Junior Lender of any intended action relating to the Senior Loan which would require Rating Agency Confirmation pursuant to this Agreement and each Junior Lender shall cooperate at no out-of-pocket expense to such Junior Lender with Senior Lender in obtaining such Rating Agency Confirmation. Each Junior Lender shall pay all fees and expenses of the Rating Agencies in connection with any request for any

Rating Agency Confirmation with respect to actions by such Junior Lender pursuant to this Agreement. Senior Lender shall pay all fees and expenses of the Rating Agencies in connection with any request for any Rating Agency Confirmation with respect to actions by Senior Lender pursuant to this Agreement (other than such actions taken at the request of a Junior Lender). No Rating Agency Confirmation is required unless specifically stated to be required.

Section 8. MODIFICATIONS, AMENDMENTS, ETC.

(a) Senior Lender shall have the right without the consent of any Junior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a “**Senior Loan Modification**”) of the Senior Loan or any of the Senior Loan Documents, provided that no such Senior Loan Modification shall (i) increase the interest rate or principal amount of the Senior Loan except for increases in principal resulting from any Protective Advances, (ii) increase in any other material respect any monetary obligations of any Borrower Party under the Senior Loan Documents, (iii) shorten the scheduled maturity date of the Senior Loan (other than by acceleration upon the occurrence of an Event of Default) or extend the term of the Senior Loan by more than three (3) months (other than pursuant to an extension option, if any, set forth in the Senior Loan Documents on the date hereof, or in any amendment to the Senior Loan Documents consented to in writing by the Junior Lenders), (iv) convert or exchange the Senior Loan into or for any equity interest or other indebtedness of any Borrower Party or any Broad Affiliate thereof, (v) waive, amend or modify the provisions limiting encumbrances or transfers of direct or indirect interests in any Borrower Party or the Premises or governing Borrower’s right to replace Manager, (vi) waive, modify or amend the terms and provisions of the Senior Loan Agreement or the Cash Management Agreement or any other provisions of the Senior Loan Documents regarding cash management and (including, without limitation, credit card and tenant direction letters) with respect to the manner, timing, priority, amounts, sequence of distribution or method of the application of Rents or other payments, under the Senior Loan Documents, (vii) cross-default the Senior Loan with or subordinate the Senior Loan to any other indebtedness, or cross-collateralize the security for the Senior Loan with any other indebtedness, (viii) modify or amend the definitions of “Alterations Threshold”, “Approved Annual Budget”, “Bankruptcy Action”, “Capital Expenditures”, “Cash Sweep Event”, “Cash Sweep Event Cure”, “Cash Sweep Period”, “Debt Service Coverage Ratio”, “DSCR Cure Action”, “DSCR Trigger Event”, “Excess Cash Flow”, “Gross Income From Operations”, “Mezzanine Debt Service”, “Net Operating Income”, “Operating Expenses”, “Permitted Transfer”, “Qualified Manager”, and “Yield Maintenance Default Premium” (as such terms are defined in the Senior Loan Agreement) and any of the terms used within such definitions or the covenants relating thereto or the schedules or exhibits referenced therein, in effect as of the date hereof, (ix) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge or impose any new prepayment fee, premium or yield maintenance charge, (x) release its lien on any portion of the Premises, the Leases and Rents or any other material portion of the collateral originally granted under the Senior Loan Documents (except as may be required or permitted in accordance with the terms of the Senior Loan Documents as of the date hereof in exchange for prepayment in full in cash of the Senior Loan) (it being understood that nothing herein shall prohibit or be construed to prohibit the release of any guarantor under the Guaranty and Environmental Indemnity delivered

with respect to the Senior Loan pursuant to and in accordance with the terms of the Senior Loan Agreement and otherwise permitted without the consent of any Junior Lender pursuant to clause (xvi) hereof), (xi) provide for any contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises (or other similar equity participation), (xii) impose any financial covenants on any Borrower Party or Guarantor under any Senior Loan Document (or if such covenants exist, impose more restrictive financial covenants on such Borrower Party or such Guarantor), (xiii) modify or amend any default provision (other than waivers of defaults), including by way of shortening any notice and cure periods provided in the Senior Loan Documents, (xiv) modify, amend or waive any insurance requirements (including any deductibles, limits, qualifications of insurers, terrorism insurance requirements or environmental insurance requirements), (xv) impose any new or additional fees not provided for in the Senior Loan Documents as of the date hereof, (xvi) release or modify the scope of the liability of any Guarantor under the Guaranty delivered with respect to the Senior Loan except pursuant to and in accordance with the terms of the Senior Loan Agreement and acceptance of a guaranty from one or more supplemental or replacement guarantors in accordance therewith, (xvii) modify, amend or waive any terms or provisions relating to property releases, (xviii) amend, waive or modify the terms and provisions relating to the Reserve Funds or impose any new reserve requirements, (xix) modify, amend or waive any obligation or liability of the Guarantor under the Senior Loan with respect to the Senior Loan debt being recourse to such Guarantor pursuant to and in accordance with the related Guaranty (provided that, notwithstanding anything to the contrary in Section 6(a), no substitute Third Party Agreement delivered to Senior Lender under Section 6(a) shall be required to reflect any such amendment or modification that was not consented to by the applicable Junior Lender in accordance with its rights under the Junior Loan Documents and hereunder), (xx) waive, modify or amend the terms and provisions of Section 2.8 of the Senior Loan Agreement, (xxi) accept a grant of any lien on or security interest in any collateral or property of Borrower or any other Person not originally granted or contemplated to be granted under the Senior Loan Documents, (xxii) spread the lien of any Mortgage to encumber any additional real property, or (xxiii) waive any requirement of Senior Borrower to post security or surety bonds with respect to alterations under the Senior Loan Agreement; provided, however, that after the later of (A) the expiration of the applicable Monetary Cure Period or Non-Monetary Cure Period (and provided a Continuing Event of Default exists) and (B) the date that is thirty (30) days after Junior Lenders have been given notice of a Purchase Option Event (plus an additional ten (10) Business Days to the extent Junior Lender has delivered a Purchase Election Notice prior to the expiration of such thirty (30) day period), Senior Lender shall not be obligated to obtain the consent of any Junior Lender to a Senior Loan Modification in the case of a work-out or other surrender, extension, compromise, release, renewal, or indulgence relating to the Senior Loan, except that under no circumstance shall modifications as described in clause (i) (with respect to increase in principal amount only), clause (iii) (with respect to shortening the scheduled maturity date only) , clause (v) (to the extent such modification would limit or prohibit the exercise of remedies and realization upon the Equity Collateral by a Junior Lender or Loan Pledgee in accordance with the terms hereof or cause such exercise to constitute an Event of Default under the Senior Loan) or clause (ix) be made without the written consent of each of the Junior Lenders; and provided further, that notwithstanding anything to the contrary above, during the continuance of a default that is caused by a Proceeding of any Borrower Party (to which Senior Lender shall have not consented) after the later of (X) the expiration of the applicable Non-Monetary Cure Period (and

provided a Continuing Event of Default exists) and (Y) the date that is thirty (30) days after Junior Lenders have been given notice of a Purchase Option Event (plus an additional ten (10) Business Days to the extent Junior Lender has delivered a Purchase Election Notice prior to the expiration of such thirty (30) day period), Senior Lender shall not be obligated to obtain the consent of any Junior Lender to a Senior Loan Modification in the case of any proposed plan of reorganization including any Borrower Party under such Proceeding. In addition and notwithstanding the foregoing provisions of this Section 8(a), any amounts funded by Senior Lender pursuant to the Senior Loan Documents in effect as of the date hereof as a result of (1) the making of any Protective Advances or other advances by Senior Lender to the extent that such other advances are contemplated in the Senior Loan Documents or (2) interest accruals or accretions and any compounding thereof (including default interest) to the extent provided for in the Senior Loan Documents (as the same may be modified pursuant to a Senior Loan Modification permitted under this Agreement), shall not be deemed to contravene this Section 8(a).

(b) Each Junior Lender shall have the right without the consent of Senior Lender or the other Junior Lenders in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a “**Junior Loan Modification**”) of its respective Junior Loan or its respective Junior Loan Documents, provided that no such Junior Loan Modification shall (i) increase the interest rate or principal amount of the applicable Junior Loan except for increases in principal resulting from any Protective Advances, (ii) increase in any other material respect any monetary obligations of the applicable Junior Borrower under the applicable Junior Loan Documents, (iii) shorten the scheduled maturity date of the applicable Junior Loan (other than by acceleration upon the occurrence of an Event of Default), or extend the term of the applicable Junior Loan by more than three (3) months (other than pursuant to an extension option, if any, set forth in the Junior Loan Documents on the date hereof, or in any amendment to the applicable Junior Loan Documents consented to in writing by the Senior Lender and the other Junior Lenders), (iv) convert or exchange the Junior Loan into or for any equity interests or indebtedness or preferred indebtedness of Senior Junior Borrower (in the case of a Senior Junior Loan) or Subordinate Junior Borrower (in the case of a Subordinate Junior Loan) (except that the most Subordinate Junior Lender (only) may effect such a conversion if the Conversion Conditions have been satisfied), or subordinate any of the Junior Loan to any indebtedness of the applicable Junior Borrower, (v) provide for any additional contingent interest, additional interest or so-called “kicker” interest in the applicable Junior Borrower measured on the basis of the cash flow or appreciation of the Premises (or other similar equity participation in the applicable Junior Borrower), (vi) cross default the applicable Junior Loan with any other indebtedness or otherwise modify any default provisions (other than waivers of defaults), (vii) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge or impose any new prepayment fee, premium or yield maintenance charge, (viii) impose any financial covenants on the applicable Junior Borrower or Junior Guarantor under the Guaranty delivered with respect to the applicable Junior Loan (or if such covenants exist, impose more restrictive financial covenants on such Junior Borrower or such Junior Guarantor), (ix) impose any new or additional fees not provided for in the applicable Junior Loan Documents as of the date hereof, (x) intentionally omitted, (xi) intentionally omitted, (xii) waive, amend or modify the provisions limiting encumbrances or

transfers of direct or indirect interests in the applicable Junior Borrower, Borrower, the Premises, or governing Borrower's right to replace Manager, (xiii) modify or amend the terms and provisions of the Junior Loan Documents with respect to the manner, timing, priority, amounts, sequence of distribution or method of the application of payments, under the applicable Junior Loan Documents, (xiv) modify or amend the definitions of "Alterations Threshold", "Approved Annual Budget", "Bankruptcy Action", "Capital Expenditures", "Cash Sweep Event", "Cash Sweep Event Cure", "Cash Sweep Period", "Debt Service Coverage Ratio", "DSCR Cure Action", "DSCR Trigger Event", "Excess Cash Flow", "Gross Income From Operations", "Net Operating Income", "Operating Expenses", "Permitted Transfer", "Qualified Manager", and "Yield Maintenance Default Premium" (as such terms are defined in the applicable Junior Loan Agreement), and any of the terms used within such definitions or the covenants relating thereto or the schedules or exhibits referenced therein, in effect as of the date hereof, (xv) release its lien on any Equity Collateral or any other material portion of the collateral originally granted under the applicable Junior Loan Documents (except as may be required or permitted in accordance with the terms of the applicable Junior Loan Documents as of the date hereof in exchange for prepayment in full in cash of the applicable Junior Loan, or in part, in connection with the release of the Premises or portions thereof) (it being understood that nothing herein shall prohibit or be construed to prohibit the release of any guarantor under the Guaranty delivered with respect to the applicable Junior Loan pursuant to and in accordance with the terms of the applicable Junior Loan Agreement and otherwise permitted without the consent of Senior Lender or any Junior Lender pursuant to clause (xxi) hereof), (xvi) modify, amend or waive any insurance requirements, (xvii) modify, amend or waive any terms or provisions relating to Equity Collateral releases, (xviii) amend, waive or modify the terms and provisions relating to the Reserve Funds (as defined in the related Junior Loan Agreement) or impose any new reserve requirements, (xix) modify, amend or waive any obligation or liability of the Guarantor under the applicable Junior Loan with respect to the Junior Loan debt being recourse to such Guarantor pursuant to and in accordance with the related Guaranty (provided that, notwithstanding anything to the contrary in Section 6(a), no substitute Third Party Agreement delivered to Senior Junior Lender under Section 6(a) shall be required to reflect any such amendment or modification that was not consented to by the applicable Subordinate Junior Lender in accordance with its rights under the applicable Subordinate Junior Loan Documents and hereunder), (xx) waive, modify or amend the terms and provisions of Section 2.8 of the applicable Junior Loan Agreement, (xxi) release any guarantor under the Guaranty delivered with respect to the applicable Junior Loan except pursuant to and in accordance with the terms of the applicable Junior Loan Agreement and acceptance of a guaranty from one or more supplemental or replacement guarantors in accordance therewith, (xxxii) waive any requirement of the applicable Junior Borrower to post security or surety bonds with respect to the alterations under the Senior Loan Agreement; provided, however, that after the later of (A) the expiration of the applicable Junior Loan Monetary Cure Period or Junior Loan Non-Monetary Cure Period and provided that a Continuing Event of Default exists and (B) the date that is thirty (30) days after Subordinate Junior Lender has been given notice of a Junior Purchase Option Event (plus, if such Junior Lender is a Subordinate Junior Lender, an additional ten (10) Business Days to the extent such Subordinate Junior Lender has delivered a Purchase Election Notice to each Senior Junior Lender prior to the expiration of such thirty (30) day period), the applicable Junior Lender shall not be obligated to obtain the consent of Senior Lender or any Junior Lender to a Junior Loan Modification in the case of a work-out or other surrender, extension, compromise, release,

renewal, or indulgence relating to the applicable Junior Loan, except that under no circumstance shall modifications as described in clause (i) (with respect to increase in principal amount only), clause (ii), clause (iii) (with respect to shortening the scheduled maturity date only), clause (iv), clause (v), or clause (vii) be made without the written consent of Senior Lender and Senior Junior Lender unless, with respect to clause (iv), the Conversion Conditions have been satisfied and with respect to clause (v), the Kicker Conditions have been satisfied in which case such modifications in clause (iv) or clause (v), as applicable, may be made at any time without Senior Lender's or any Junior Lender's consent; and provided further, that notwithstanding anything to the contrary above, during the continuance of a default that is caused by a Proceeding of a Senior Junior Borrower (to which Senior Junior Lender shall have not consented) after the later of (X) the expiration of the applicable Junior Loan Non-Monetary Cure Period (and provided a Continuing Event of Default exists) and (Y) the date that is thirty (30) days after Subordinate Junior Lender has been given notice of a Junior Purchase Option Event (plus, if such Junior Lender is a Subordinate Junior Lender, an additional ten (10) Business Days to the extent such Subordinate Junior Lender has delivered a Purchase Election Notice to each Senior Junior Lender prior to the expiration of such thirty (30) day period), Senior Junior Lender shall not be obligated to obtain the consent of Subordinate Junior Lender to a Junior Loan Modification in the case of any proposed plan of reorganization including Senior Junior Borrower under such Proceeding. In addition and notwithstanding the foregoing provisions of this Section 8(b), the following shall not be deemed to contravene the terms of this Section 8(b):

(i) (A) any amounts funded by a Junior Lender under its Junior Loan Documents as a result of the making of any Protective Advances or cure payments by such Junior Lender or (B) interest accruals or accretions and any compounding thereof (including default interest);

(ii) to the extent no Continuing Event of Default has occurred and is continuing (A) under the Senior Loan, (I) if a Senior Junior Loan is the subject of a Continuing Event of Default, retention by the related Senior Junior Lender of excess net cash flow that would otherwise be payable to the related Senior Junior Borrower and application of such excess net cash flow by such Senior Junior Lender either to an account to be held as cash collateral for such Senior Junior Loan held by such Senior Junior Lender or to amortize the principal balance of such Senior Junior Loan, as may be determined by such Senior Junior Lender in its sole discretion and (II) if a Subordinate Junior Loan is the subject of a Continuing Event of Default and no Continuing Event of Default exists with respect to any Senior Junior Loan, retention by the related Subordinate Junior Lender of excess net cash flow that would otherwise be payable to the related Subordinate Junior Borrower and application of such excess net cash flow by such Subordinate Junior Lender either to an account to be held as cash collateral for such Subordinate Junior Loan held by such Subordinate Junior Lender or to amortize the principal balance of such Subordinate Junior Loan, as may be determined by such Subordinate Junior Lender in its sole discretion, and (B) under a Senior Junior Loan, if any Subordinate Junior Loan is the subject of a Continuing Event of Default, retention by such Subordinate Junior Lender of excess net cash flow that would otherwise be payable to the related Subordinate Junior Borrower and application of such excess net cash flow by such Subordinate Junior Lender either to be held as cash collateral for such Subordinate Junior Loan held by such Subordinate Junior Lender or to amortize the

principal balance of such Subordinate Junior Loan, as may be determined by such Subordinate Junior Lender in its sole discretion; and

(iii) accrual of interest on a Junior Loan in accordance with the terms of the related Junior Loan Documents following a Continuing Event of Default under any Senior Junior Loan Documents or an Event of Default under any Subordinate Junior Loan Documents.

(c) Each of Senior Lender and each Junior Lender hereby agree to respond promptly to any request for consent to a Senior Loan Modification or Junior Loan Modification.

(d) Senior Lender shall deliver to Junior Lenders promptly upon execution thereof copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents, including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Senior Lender (and regardless of whether Senior Lender is then permitted hereunder to execute the same without any Junior Lender's consent, as applicable, provided that, in no event shall the obligation to deliver copies of any document pursuant to this Section 8(d) be construed to permit Senior Lender to execute such document without any Junior Lender's consent, as applicable, if Senior Lender is not otherwise permitted hereunder to do so).

(e) Each Junior Lender shall deliver to Senior Lender and each other Junior Lender promptly upon execution thereof copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of its respective Junior Loan Documents, including, without limitation, any side letters, waivers or consents entered into, executed or delivered by such Junior Lender (and regardless of whether such Junior Lender is then permitted hereunder to execute the same without Senior Lender or the other Junior Lender's consent as applicable, provided that, in no event shall the obligation to deliver copies of any document pursuant to this Section 8(e) be construed to permit a Junior Lender to execute such document without the consent of Senior Lender or the other Junior Lender, as applicable, if such Junior Lender is not otherwise permitted hereunder to do so).

Section 9. SUBORDINATION OF JUNIOR LOANS AND JUNIOR LOAN DOCUMENTS.

Except as otherwise provided in this Agreement, including, without limitation, Section 6(b) hereof, each Junior Lender hereby subordinates and makes junior the Junior Loan held by such Junior Lender, the related Junior Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (a) the Senior Loan and each Senior Junior Loan, (b) the liens and security interests created by the Senior Loan Documents and the Senior Junior Loan Documents, and (c) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents and the Senior Junior Loan Documents, and no extensions, modifications, consolidations, supplements, amendments, replacements and restatements of or to the Senior Loan Documents or the Senior Junior Loan Documents shall affect the subordination thereof as set forth in this Section 9. Notwithstanding the foregoing, this Agreement shall not be construed as subordinating and shall

not subordinate or impair a Junior Lender's first lien priority right, estate and interest in and to the Separate Collateral relating solely to the Junior Loan that is held by such Junior Lender, and Senior Lender and each other Junior Lender each hereby acknowledges and agrees that none of Senior Lender or such other Junior Lender has, and shall not hereafter acquire, any lien on, or any other interest whatsoever in such Separate Collateral, or any part thereof, and that collection from any such Separate Collateral (including the sale by such Junior Lender of all or any of its interest in the Junior Loan and the related sales proceeds), the exercise of remedies and realization upon such Separate Collateral by such Junior Lender or a Loan Pledgee and the application of proceeds therefrom (including the proceeds from any sale of such Junior Lender's interest in the Junior Loan) as such Junior Lender deems appropriate in its discretion (*i.e.*, without payment subordination) are expressly permitted and shall not constitute a default or an event of default under this Agreement, the Senior Loan Documents or the Senior Junior Loan Documents; provided that such exercise of remedies and realization are conducted in a manner that does not constitute a breach of this Agreement. Notwithstanding anything contained in this Section 9 or elsewhere under this Agreement to the contrary, provided there is no Continuing Event of Default of the Senior Loan or (with respect to acceptance of payments by Subordinate Junior Lender only) the Senior Junior Loan Documents occurring, each Junior Lender may, at any time, accept, retain and apply any payment from any Affiliate of the related Junior Borrower or any other party (other than any Borrower Party or any other Junior Borrower) to the extent such payment is (x) made from such Person's own funds (or the funds of any other Affiliate of such Junior Borrower or any other party other than any Borrower Party or any other Junior Borrower), (y) made in accordance with the terms and conditions of such Junior Borrower's Junior Loan Documents, and (z) not revenue derived from the Premises, insurance, condemnation proceeds, reserve/escrow amounts or the other collateral for the Senior Loan or the other Junior Loan (as applicable) except to the extent the same was distributed or dividended to such Junior Borrower or Affiliate thereof (other than a distribution or dividend in violation of applicable terms and conditions of the Senior Loan Documents or applicable Junior Loan Documents).

Section 10. PAYMENT SUBORDINATION.

(a) Except (1) as otherwise expressly provided in this Agreement, including, without limitation, Section 6(b) hereof, or (2) in connection with the exercise by a Junior Lender of its rights and remedies with respect to the Separate Collateral and the application of the proceeds therefrom (in accordance with this Agreement, including the proceeds from any sale of such Junior Lender's interest in the related Junior Loan) as such Junior Lender deems appropriate in its sole discretion, (i) all of such Junior Lender's rights to payment of the Junior Loan held by such Junior Lender and the obligations evidenced by the related Junior Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by the Borrower Parties of the Senior Loan and the obligations secured by the Senior Loan Documents; and (ii) all of such Junior Lender's rights to payment of the Junior Loan held by such Junior Lender and the obligations evidenced by the related Junior Loan Documents are hereby subordinated to all of the rights of each Senior Junior Lender to payment by each Senior Junior Borrower of the related Senior Junior Loan and the obligations secured by the Senior Junior Loan Documents, and such Junior Lender shall not, from and after receipt by such Junior Lender of written notice of the declaration of, and thereafter, during the continuance of, a Continuing Event of Default under the Senior Loan Documents or the Senior Junior Loan Documents, accept or receive payments

(including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from any Borrower Party, the Premises, from any Senior Junior Borrower, and/or proceeds from Separate Collateral securing or guaranteeing such Senior Junior Loan prior to the date that all obligations of Borrower to Senior Lender under the Senior Loan Documents and the related Senior Junior Borrower to the related Senior Junior Lender under the Senior Junior Loan Documents are paid in full in cash (other than (a) payments with respect to a Junior Lender's Separate Collateral, including the proceeds of any enforcement, sale or liquidation of a Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement, or (b) proceeds from any Transfer of such Junior Lender's interest in the Junior Loan held by such Junior Lender in accordance with this Agreement and the Junior Lender receiving such payment may retain such payments).

(b) If a Proceeding of a Borrower Party shall have occurred and has not been dismissed or there shall have occurred and be a Continuing Event of Default under the Senior Loan Documents, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender under the Senior Loan Documents before any Junior Lender is entitled to receive any payment on account of any Junior Loan (other than (a) payments with respect to a Junior Lender's Separate Collateral, including the proceeds of any enforcement, sale or liquidation of a Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement or, (b) proceeds from any sale in accordance with this Agreement of such Junior Lender's interest in the Junior Loan held by such Junior Lender) and no Junior Lender shall accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from any Borrower Party or from the Premises or other collateral securing the Senior Loan prior to the date that all obligations of the Borrower Parties to Senior Lender under the Senior Loan Documents are paid in full in cash; provided, however, that if a Junior Lender is diligently exercising its respective cure rights pursuant to Section 12 with respect to defaults under the Senior Loan Documents, then payments may be made under the related Junior Loan, as well as under any Junior Loan that is a Senior Junior Loan relative to such Junior Loan, as if the Event of Default under the Senior Loan had not occurred so long as no Proceeding of any Borrower Party shall have occurred without being dismissed. If a Proceeding with respect to a Senior Junior Borrower shall have occurred and has not been dismissed or there shall have occurred and be a Continuing Event of Default under the Senior Junior Loan Documents, the related Senior Junior Lender shall be entitled to receive payment in full in cash and performance in full of all amounts due or to become due to such Senior Junior Lender under such Senior Junior Loan Documents before any Subordinate Junior Lender is entitled to receive any payment on account of the related Subordinate Junior Loan (other than (a) payments with respect to such Subordinate Junior Lender's Separate Collateral, including the proceeds of any enforcement, sale or liquidation of Subordinate Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement, or (b) proceeds from any sale of such Junior Lender's interest in the Junior Loan held by such Junior Lender) and Subordinate Junior Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from a Senior Junior Borrower or from the Separate Collateral for any Senior Junior Loan prior to the date that all obligations of such Senior Junior Borrower to such Senior Junior Lender under the Senior Junior Loan Documents are paid in full in cash; provided, however, that if such Subordinate Junior Lender is diligently exercising its cure rights pursuant to Section 12 with respect to all defaults under the Senior Loan

Documents and the Senior Junior Loan Documents, then payments may be made under the related Subordinate Junior Loan, as if the Event of Default under such Senior Junior Loan had not occurred so long as a Proceeding of a Senior Junior Borrower shall not have occurred without being dismissed. All payments or distributions upon or with respect to a Junior Loan which are received by a Junior Lender contrary to the provisions of this Agreement shall be received in trust for the benefit of Senior Lender and each applicable Senior Junior Lender (to the extent payable to such Senior Junior Lender) and shall be paid over first to Senior Lender to the extent that Senior Lender is entitled thereto hereunder and under the Senior Loan Documents and then to the most senior Senior Junior Lender to the extent the same is entitled thereto hereunder and under the Senior Junior Loan Documents in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, as applicable, the payment or performance first of the Senior Loan in accordance with the terms of the Senior Loan Documents and then the Senior Junior Loan in accordance with the terms of the Senior Junior Loan Documents. Nothing contained herein shall prohibit a Junior Lender from making Protective Advances (and adding the amount thereof to the principal balance of its Junior Loan) notwithstanding the existence of an Event of Default under the Senior Loan or any Senior Junior Loan at such time.

(c) Notwithstanding anything to the contrary contained in this Agreement, including Sections 10(a) and (b):

(i) provided that no Continuing Event of Default shall then exist under the Senior Loan Documents or (with respect to acceptance of payments by Subordinate Junior Lender only) the Senior Junior Loan Documents, a Junior Lender may accept and retain payments of any amounts (both current and delinquent) due and payable from time to time (A) which the applicable Junior Borrower is obligated to pay such Junior Lender in accordance with the terms and conditions of the applicable Junior Loan Documents, and (B) from a Junior Borrower from its own funds and from funds of any Affiliate contributed to such Junior Borrower (and not revenue derived from the Premises, insurance, condemnation proceeds, reserve/escrow amounts or the other collateral for the Senior Loan or any Senior Junior Loan except to the extent the same was distributed or dividended to such Junior Borrower or parent thereof (and the same was not a distribution or dividend in violation of applicable terms and conditions of the Senior Loan Documents or Senior Junior Loan Documents)), and, in either case, such Junior Lender shall have no obligation to pay any such amounts over to Senior Lender or Senior Junior Lender;

(ii) provided that no Continuing Event of Default shall then exist under the Senior Loan Documents or (with respect to acceptance of payments by Subordinate Junior Lender only) the Senior Junior Loan Documents, nothing herein shall (A) prohibit a Junior Borrower from making payments from its own funds and from funds of any Affiliate contributed to such Junior Borrower (and not revenue derived from the Premises, insurance, condemnation proceeds, reserve or escrow amounts or the other collateral for the Senior Loan or (with respect to a Subordinate Junior Loan only) any Senior Junior Loan except to the extent the same was distributed or dividended to such Junior Borrower or Affiliate thereof (and the same was not a distribution or dividend in violation of applicable terms and conditions of the Senior Loan Documents or Senior Junior Loan Documents)) to cure a default under or otherwise to comply with its

respective Junior Loan notwithstanding the existence of a default under the Senior Loan or any Senior Junior Loan at such time or (B) prohibit a Junior Lender from accepting and retaining any such permitted payment described in clause (A) of this subsection (ii) (it being acknowledged and agreed that any funds received by a Junior Lender from distributions or dividends made in violation of the terms of the Senior Loan Documents or the Senior Junior Loan Documents shall be held in trust for the benefit of Senior Lender and Senior Junior Lender and shall be paid over first to Senior Lender to the extent that Senior Lender is entitled thereto hereunder and under the Senior Loan Documents and then to Senior Junior Lender to the extent the same is entitled thereto hereunder and under the Senior Junior Loan Documents in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, as applicable, the payment or performance first of the Senior Loan in accordance with the terms of the Senior Loan Documents and then the most senior Senior Junior Loan in accordance with the terms of the Senior Junior Loan Documents);

(iii) provided that no Continuing Event of Default shall then exist under the Senior Loan Documents or (with respect to acceptance of payments by Subordinate Junior Lender only) the Senior Junior Loan Documents, any guarantor of any Junior Loan, any Affiliate of any guarantor of any Junior Loan, and any other Person may make payments from its own funds (which may include any Premises-related revenue that is or was distributed or dividend to such Person (other than a distribution or dividend in violation of applicable terms and conditions of the Senior Loan Documents or, if applicable, the Senior Junior Loan Documents)) to cure a default or otherwise make any payments under or in respect of the respective Junior Loan, and the applicable Junior Lender may receive and retain any such payments notwithstanding the existence of any Event of Default under the Senior Loan or any Senior Junior Loan (it being acknowledged and agreed that any funds received by a Junior Lender from distributions or dividends made in violation of the terms of the Senior Loan Documents or the Senior Junior Loan Documents shall be held in trust for the benefit of Senior Lender and each Senior Junior Lender and shall be paid over first to Senior Lender and then to the most senior Senior Junior Lender in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for the payment or performance first of the Senior Loan in accordance with the terms of the Senior Loan Documents and then the applicable Senior Junior Loan in accordance with the terms of the Senior Junior Loan Documents); and

(iv) a Junior Lender may accept and retain amounts received in connection with the exercise of its rights and remedies with respect to its related Separate Collateral in accordance with the terms and conditions of this Agreement, including the proceeds of any Equity Collateral Enforcement Action and any other enforcement, sale or liquidation of a Junior Lender's Separate Collateral permitted pursuant to the terms of this Agreement, or proceeds from any sale of such Junior Lender's interest in the Junior Loan held by such Junior Lender or any other payments permitted to be made to such Junior Lender hereunder.

(d) A Junior Lender may take any Equity Collateral Enforcement Action which is not prohibited by Section 6 in its sole and absolute discretion without Senior Lender's or any other Junior Lender's consent; provided, that such Junior Lender shall (i) prior to commencing any Equity Collateral Enforcement Action, give Senior Lender and each other Junior Lender written notice of the default which would permit such Junior Lender to commence such Equity Collateral Enforcement Action, and (ii) keep Senior Lender and Senior Junior Lender reasonably apprised as to the status of any Equity Collateral Enforcement Action, provided, that Junior Lender's compliance with its obligations under this sentence shall not in and of itself constitute a condition to completing an Equity Collateral Enforcement Action (or otherwise give rise to any right of Senior Lender or the other Junior Lender to, or to move or otherwise seek to, stay, delay, postpone, prevent or otherwise interfere with such Equity Collateral Enforcement Action), so long as such Equity Collateral Enforcement Action is otherwise implemented in accordance with the terms and provisions of this Agreement.

(e) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, any payments, awards, proceeds, distributions, or consideration arising from any such event, net of reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees), if any, in collecting such payments, awards, proceeds, distributions, or consideration (the "Award"), shall be applied by Senior Lender either to restoration or to the Senior Loan in accordance with Section 2.4.2 of the Senior Loan Agreement. In the event that Senior Lender elects not to make the Award available for restoration and the Award is in excess of the Senior Loan Liabilities, then Senior Lender shall distribute such excess to Mezzanine A Lender to be applied in accordance with Section 2.4.2 of the Mezzanine A Loan Agreement or if the Mezzanine A Loan is not then outstanding, to Mezzanine B Lender, to be applied in accordance with Section 2.4.2 of the Mezzanine B Loan Agreement or, if the Mezzanine A Loan and the Mezzanine B Loan are not then outstanding, to Mezzanine C Lender, to be applied in accordance with Section 2.4.2 of the Mezzanine C Loan Agreement, or if no Junior Loan is outstanding, to Borrower to the extent permitted under the Senior Loan Agreement. In the event of any competing claims for all or any part of the Award, Senior Lender shall hold the Award (or such portion thereof) until Senior Lender receives an agreement signed by all relevant parties making a claim to the Award (or such portion thereof) or a final order of a court of competent jurisdiction directing Senior Lender as to how the Award (or such portion thereof) is to be distributed. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Awards in any such event to Borrower if and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the applicable Premises or any portion thereof in accordance with the terms and provisions of the Senior Loan Documents. Awards made available to, and used by, Borrower for the repair or restoration of the Premises or any applicable portion thereof shall not be subject to attachment by any Junior Lender. Upon a Junior Lender's written request, Senior Lender shall advise such Junior Lender of the status of the adjustment or the settlement of a claim or of any disbursement of proceeds to the extent received or disbursed by Senior Lender. Senior Lender shall promptly (1) notify Junior Lenders of any requests by Borrower for the release of any Award and (2) provide Junior Lenders with any documentation delivered by Borrower to Senior Lender with respect to any such request by Borrower for the release of any Award.

(f) Each Junior Lender shall be entitled to retain (i) any proceeds generated as a result of any Equity Collateral Enforcement Action with respect to the Equity Collateral for the related Junior Loan up to the applicable judgment amount, so long as such action was commenced in accordance with the terms of this Agreement, and (ii) payments or proceeds generated from an Equity Collateral Enforcement Action with respect to the Separate Collateral for the related Junior Loan in accordance with this Agreement.

Section 11. RIGHTS OF SUBROGATION; BANKRUPTCY.

(a) Marshalling of Assets and Information. Senior Lender and Junior Lenders each hereby waives any requirement for marshaling of assets in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the Senior Loan Documents or the Junior Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of the Junior Lenders and Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower and each Junior Borrower, the condition of the Premises and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither Senior Lender nor any Junior Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the others relative to such condition, business, assets and/or operations.

(b) No Fiduciary Duties. Each Junior Lender agrees that Senior Lender owes no fiduciary duty to any Junior Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and each Junior Lender agrees not to assert any such claim. Senior Lender agrees that none of the Junior Lenders owes a fiduciary duty to Senior Lender in connection with the administration of the Junior Loans and the Junior Loan Documents and Senior Lender agrees not to assert any such claim. Each Junior Lender agrees that no other Junior Lender owes any fiduciary duty to such Junior Lender in connection with the administration of a Junior Loan and the related Junior Loan Documents and each Junior Lender agrees not to assert any such claim.

(c) Payments, Distributions and Protective Advances. Except as expressly provided in Section 6(b), no payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by a Junior Lender shall entitle such Junior Lender to exercise any right of subrogation in respect thereof prior to the payment in full in cash of the Senior Loan Liabilities, and each of the Junior Lenders agrees that, except with respect to the enforcement of its remedies under the Junior Loan Documents related to the Junior Loan held by such Junior Lender permitted hereunder, prior to the satisfaction of all Senior Loan Liabilities it shall not acquire, by subrogation or otherwise (except as expressly set forth in Section 6(b) hereof), any lien, estate, right or other interest in any portion of the Premises or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby. Except as expressly set forth in Section 6(b) hereof, no payment or distribution to a Senior Junior Lender pursuant to the provisions of this Agreement and no Protective Advance by a Subordinate Junior Lender shall entitle such Subordinate Junior Lender to exercise any right of subrogation in respect thereof prior to the payment in full in cash of the Senior Junior Loan Liabilities, and each Subordinate Junior Lender agrees that, except with respect to the enforcement of its remedies under the Subordinate Junior Loan Documents related to the

Subordinate Junior Loan held by such Subordinate Junior Lender permitted hereunder, prior to the satisfaction of all Senior Junior Loan Liabilities it shall not acquire, by subrogation or otherwise (except as expressly set forth in Section 6(b) hereof), any lien, estate, right or other interest in any portion of the Premises, the Separate Collateral of any Senior Junior Lender or any other collateral now securing the Senior Loan or any Senior Junior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Junior Loan Documents or the Senior Loan Documents or the liens, rights, estates and interests created thereby.

(d) Bankruptcy. (i) Subject to Section 18(m), the provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action by or against any Borrower Party or any Junior Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (as to any Borrower Party, any Junior Borrower or any other Person, a “Proceeding”).

(ii) For as long as the Senior Loan shall remain outstanding, none of Junior Lenders shall direct or cause, and none of them shall solicit any Person to direct or cause, either any Borrower Party or any Person which Controls any Borrower Party (the “Borrower Group”) to: (1) commence any Proceeding by or against any Borrower Party; (2) institute proceedings to have any Borrower Party adjudicated a bankrupt or insolvent; (3) consent to, or affirmatively acquiesce in, the institution of any Proceeding by or against any Borrower Party; (4) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of any Borrower Party; (5) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for any Borrower Party, the Premises (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (6) make an assignment for the benefit of any creditor of any Borrower Party; (7) seek to consolidate the Premises or any other assets of any Borrower Party with the assets of any Junior Borrower or any member of the Borrower Group in any Proceeding; or (8) affirmatively take any action in furtherance of any of the foregoing. The terms and provisions of this Section 11(d) apply to each Junior Lender solely in its respective capacity as a Junior Lender. If any Junior Lender commences an Equity Collateral Enforcement Action against any Junior Borrower, and pursuant to such Equity Collateral Enforcement Action such Junior Lender takes title to the Equity Collateral of such Junior Borrower, from and after the date title to such Equity Collateral is vested in such Junior Lender, such Junior Lender shall be bound by the terms and provisions of the respective organizational documents of each applicable Borrower Party and such Junior Borrower regarding bankruptcy and all matters requiring the vote of the independent directors/managers/members of such Junior Borrower and not by the terms of this Section 11(d).

(iii) In the event that a Junior Lender is deemed to be a creditor of any Borrower Party in any Proceeding: (1) each of the Junior Lenders hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against any Borrower Party without the prior written consent of Senior Lender, except to

the extent necessary to preserve (with respect to the existence, validity or priority of such Junior Lender's security interest in any Separate Collateral pledged to such Junior Lender) or realize upon such Junior Lender's interest in any Separate Collateral pledged to such Junior Lender pursuant to the Junior Loan Documents related to the Junior Loan held by such Junior Lender; provided, however, that any such filing shall not be as a creditor of any Borrower Party unless necessary to permit the filing; (2) Senior Lender may vote in any such Proceeding any and all claims of such Junior Lender against any Borrower Party, and each of the Junior Lenders hereby appoints Senior Lender as its agent, and grants to Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to such Junior Lender in connection with any case by or against any Borrower Party in any such Proceeding, including without limitation, the right to file and prosecute any claims, to vote to accept or reject a plan, and to make any election under Section 1111(b) of the Bankruptcy Code, provided, however, that with respect to any proposed plan of reorganization including any Borrower Party in respect of which creditors are voting, Senior Lender may vote on behalf of such Junior Lender only if the proposed plan of reorganization would result in Senior Lender's claims or interests being "impaired" (as such term is defined in the Bankruptcy Code); and (3) no Junior Lender shall challenge the validity or amount of any claim against any Borrower Party submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises, or any portion thereof, or other Senior Loan collateral submitted by Senior Lender in good faith in such Proceeding, or take any other action in such Proceeding, which is adverse to Senior Lender's enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code). The terms and provisions of this Section 11(d) apply to each Junior Lender solely in its capacity as a Junior Lender. Senior Lender shall not have the rights provided in this Section 11(d)(iii) if Senior Lender is or becomes a Broad Affiliate of Borrower. Senior Lender shall have no right to vote in any Proceeding any claims of a Junior Lender against the applicable Junior Borrower, including, without limitation, any right to file and/or prosecute any claims, to vote to accept or reject a plan, or to make any election under Section 1111(b) of the Bankruptcy Code.

(iv) For as long as a Senior Junior Loan shall remain outstanding, a Subordinate Junior Lender shall not, and shall not solicit any Person to, and shall not direct or cause the related Subordinate Junior Borrower to direct or cause any Senior Junior Borrower or any Person which Controls such Senior Junior Borrower (the "**Senior Junior Borrower Group**") to: (1) commence any Proceeding by or against such Senior Junior Borrower; (2) institute proceedings to have any Senior Junior Borrower adjudicated a bankrupt or insolvent; (3) consent to, or affirmatively acquiesce in, the institution of any Proceeding by or against any Senior Junior Borrower; (4) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of any Senior Junior Borrower; (5) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for any Senior Junior Borrower, Separate Collateral for any Senior Junior Loan (or any portion thereof) or any other collateral securing any Senior Junior Loan (or any portion thereof); (6) make an assignment for the benefit of any creditor of any Senior Junior Borrower; (7) seek to consolidate the Separate Collateral for any Senior Junior Loan (or any portion thereof) or

any other assets of any Senior Junior Borrower with the assets of any Subordinate Junior Borrower under any Subordinate Junior Loan or any member of the applicable Junior Borrower Group in any Proceeding; or (8) affirmatively take any action in furtherance of any of the foregoing. The terms and provisions of this Section 11(d) apply to each Subordinate Junior Lender in its capacity as Subordinate Junior Lender.

(v) In the event that a Subordinate Junior Lender is deemed to be a creditor of a Senior Junior Borrower in any Proceeding: (1) such Subordinate Junior Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against any Senior Junior Borrower without the prior written consent of the related Senior Junior Lender, except to the extent necessary to preserve (with respect to the existence, validity or priority of such Subordinate Junior Lender's security interest in any Separate Collateral pledged to such Subordinate Junior Lender) or realize upon its interest in such Subordinate Junior Lender's Separate Collateral; provided, however, that any such filing shall not be as a creditor of such Senior Junior Borrower unless necessary to permit the filing; (2) such Senior Junior Lender may vote in any such Proceeding against such Senior Junior Borrower any and all claims of such Subordinate Junior Lender, and such Subordinate Junior Lender hereby appoints such Senior Junior Lender as its agent, and grants to such Senior Junior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to such Senior Junior Lender in connection with any case by or against the applicable Senior Junior Borrower Group in any such Proceeding, including without limitation, the right to file and prosecute any claims, to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code, provided, however, that with respect to any proposed plan of reorganization including any Senior Junior Borrower in respect of which creditors are voting, such Senior Junior Lender may vote on behalf of such Subordinate Junior Lender only if the proposed plan of reorganization would result in such Senior Junior Lender's claims or interests being "impaired" (as such term is defined in the Bankruptcy Code); (3) such Subordinate Junior Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by such Senior Junior Lender in good faith or any valuations of the Separate Collateral for such Senior Junior Loan or other collateral for such Senior Junior Loan submitted by such Senior Junior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to enforcement by such Senior Junior Lender of its claim with respect to such Senior Junior Borrower or receipt of adequate protection (as that term is defined in the Bankruptcy Code); (4) such Subordinate Junior Lender waives any right to object to, and shall be deemed to have consented to: (A) such Senior Junior Borrower's use of any cash collateral to the extent of any consent thereto given by such Senior Junior Lender, (B) any request by such Senior Junior Lender for adequate protection (as that term is defined in the Bankruptcy Code), (C) any debtor-in-possession financing provided to such Senior Junior Borrower by such Senior Junior Lender, by any Broad Affiliate of such Senior Junior Lender, or by any third party with such Senior Junior Lender's consent, (D) any motion by such Senior Junior Lender for dismissal of the Proceeding or for relief from the automatic stay (as defined in the United States Bankruptcy Code), (E) any request by such Senior Junior Lender for post-petition interest, and (F) any sale of such Senior Junior Borrower's assets

to the extent that such Senior Junior Lender has consented thereto; and (5) without such Senior Junior Lender's consent, no Subordinate Junior Lender shall, and waives any and all rights to: (A) request adequate protection (as that term is defined in the Bankruptcy Code) (and in the event any such adequate protection is awarded to such Subordinate Junior Lender, any adequate protection in the form of cash is hereby assigned to such Senior Junior Lender and any adequate protection in the form of a lien on or security interest in the Premises or any other collateral for such Senior Junior Loan is hereby subordinated to all of such Senior Junior Lender's respective rights, liens, or security interests in or to the Premises and such collateral), (B) provide debtor-in-possession financing to any Senior Junior Borrower (unless such debtor-in-possession financing shall pay the related Senior Junior Loan in full), (C) file or support any motion for dismissal of the Proceeding or relief from the automatic stay (as defined in the Bankruptcy Code), (D) request any post-petition interest, (E) request any sale of any Senior Junior Borrower's assets, or (F) file, propose, support, accept, or reject any plan of reorganization of any Senior Junior Borrower. The terms and provisions of this Section 11(d) apply to any Junior Lender solely in its capacity as a Junior Lender. No Senior Junior Lender shall have the rights provided in this Section 11(d)(v) if such Senior Junior Lender is a Broad Affiliate of Borrower or a Junior Borrower. Notwithstanding anything herein to the contrary, in no event shall Senior Junior Lender have the right to vote in any Proceeding any claims of a Junior Lender against such Junior Lender's Junior Borrower, including, without limitation, the right to file and/or prosecute any claims, to vote to accept or reject a plan, or to make any election under Section 1111(b) of the Bankruptcy Code.

(vi) Without limiting any restrictions set forth above, each Affiliate Holder agrees (A) that it shall not, and shall not solicit any Person (including, but not limited to, any Junior Borrower, any member of the related Junior Borrower Group or any Junior Lender) to and shall not direct or cause any Person to, and waives any and all rights to: (I) commence any Proceeding by or against its Junior Borrower, (II) institute proceedings to have its Junior Borrower adjudicated a bankrupt or insolvent, (III) consent to, or affirmatively acquiesce in, the institution of any Proceeding by or against its Junior Borrower, (IV) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of its Junior Borrower, (V) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for its Junior Borrower or its Separate Collateral for its Junior Loan (or any portion thereof) or any other collateral securing its Junior Loan (or any portion thereof), (VI) make an assignment for the benefit of any creditor of its Junior Borrower, (VII) seek to consolidate the Separate Collateral for its Junior Loan (or any portion thereof) or any other assets of its Junior Borrower with the assets of the applicable Junior Borrower Group, the other Junior Borrower or Borrower in any Proceeding, or (VIII) take any action in furtherance of any of the foregoing; and (B) that it shall not, and shall not solicit any Person (including, but not limited to, any Junior Borrower, any member of the related Junior Borrower Group or any Junior Lender) to, and shall not direct or cause any Person to, and waives any and all rights to: (1) make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against any Borrower Party or any Junior Borrower,

(2) object to any relief sought by Senior Lender or a Junior Lender in any Proceeding of any Borrower Party or a Junior Borrower, (3) challenge the validity or amount of any claim submitted in any Proceeding by Senior Lender or a Junior Lender in good faith or any valuations of the Premises or other collateral for the Senior Loan or a Junior Loan submitted by Senior Lender or a Junior Lender in good faith in such Proceeding, or take any other action in such Proceeding, which is adverse to enforcement by Senior Lender or a Junior Lender of such Person's respective claim with respect to any Borrower Party or a Junior Borrower or receipt of adequate protection (as that term is defined in the Bankruptcy Code), (4) provide, participate in, or support any other Person in the provision of, any debtor-in-possession financing to any Borrower Party or a Junior Borrower, (5) file or support any motion for dismissal of the Proceeding or relief from the automatic stay (as defined in the Bankruptcy Code), (6) request any post-petition interest, (7) request adequate protection, (8) request any sale of any Borrower Party's or a Junior Borrower's assets, or (9) file, propose, support, accept, or reject any plan of reorganization of any Borrower Party or a Junior Borrower.

(vii) Notwithstanding anything to the contrary contained herein, each Junior Lender shall have the right, in connection with a Proceeding of Borrower or a Junior Borrower, to assert its right to bid on the equity or the assets of Borrower or such Junior Borrower if (i) the Proceeding is a reorganization under Chapter 11 of the Bankruptcy Code and (ii) one or more of the direct or indirect owners of Borrower or such Junior Borrower are going to continue to own a direct or indirect equity interest in Borrower or such Junior Borrower, as applicable, after such reorganization in connection with a "new value" plan.

Section 12. RIGHTS OF CURE.

(a) Notice of Senior Default. Prior to accelerating the Senior Loan or commencing any other Enforcement Action by reason of an Event of Default under the Senior Loan Documents, Senior Lender shall provide written notice of the default which would permit Senior Lender to commence such Enforcement Action or accelerate the Senior Loan or the circumstances constituting or giving rise to the Event of Default to each of the Junior Lenders and any Loan Pledges entitled to notice thereof pursuant to Section 16, whether or not Senior Lender is obligated to give notice thereof to any Borrower Party (each, a "**Senior Loan Default Notice**") and shall provide each of the Junior Lenders and any such Loan Pledges notice of the failure of any Junior Lender or such Loan Pledge to exercise the cure rights provided in Section 12(b) or (c). In the event Senior Lender has delivered a Senior Loan Default Notice regarding a Senior Loan Event of Default (other than a Maturity Default under the Senior Loan) that has not been cured by a Junior Lender pursuant to Section 12, Senior Lender shall provide Junior Lenders with copies of any and all material notices relating to such Event of Default, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Enforcement Action and otherwise keep Junior Lenders reasonably apprised as to the current status of any Enforcement Action, provided, that Senior Lender's compliance with its obligations under this sentence shall not in and of itself constitute a condition to completing an Enforcement Action (or otherwise give rise to any right of any Junior Lender to, or to move or otherwise seek to, stay, delay, postpone, prevent or otherwise interfere with such Enforcement Action), so long as such Enforcement Action is otherwise implemented in accordance with the terms and

provisions of this Agreement. Except in connection with a Maturity Default under the Senior Loan, Senior Lender shall permit Junior Lenders an opportunity to cure such default in accordance with the provisions of this Section 12 and shall not accelerate the Senior Loan (other than pursuant to any automatic acceleration provided for in the Senior Loan Documents) or commence an Enforcement Action on account of such default unless such cure is not effectuated within the applicable cure periods provided for in Section 12(b) or (c). In the event of a Maturity Default under the Senior Loan, each of the Junior Lenders shall have the right to purchase the Senior Loan (and all rights thereunder) pursuant to the terms, and subject to the conditions, provided in Section 14(a). Prior to or concurrently with undertaking any curative action with respect to the Senior Loan, a Junior Lender shall provide Senior Lender and Senior Junior Lender with written notice thereof.

(b) Senior Loan Monetary Cure Period. If the default identified in a Senior Loan Default Notice is a monetary default relating to the payment of interest or scheduled principal (if any) or a liquidated sum of money, each Junior Lender shall have until ten (10) Business Days after the later of (A) the receipt by it from Senior Lender of the Senior Loan Default Notice and (B) the expiration of Borrower's cure period with respect to such default provided in the Senior Loan Documents, if any, to cure such monetary default (the "**Monetary Cure Period**"). In the event a Junior Lender elects to cure any such monetary default, such Junior Lender shall (x) reimburse Senior Lender for any interest charged by Senior Lender on any required (pursuant to an applicable pooling and servicing agreement or trust and servicing agreement in connection with a Securitization) advances for the Senior Loan (including Protective Advances) for amounts which Borrower would be obligated to pay under the Senior Loan Documents together with payment of all other amounts then due under the Senior Loan Documents (excluding any late charges, late fees and default interest), and (y) during any Monetary Cure Period, with respect to any liquidated sum of money that becomes first due and payable during such Monetary Cure Period pursuant to the Senior Loan Documents after the delivery of a Senior Loan Default Notice, such Junior Lender shall pay or cause to be paid such sum, in the amount notified to such Junior Lender by Senior Lender, not more than five (5) Business Days after receipt of such notice from Senior Lender, in accordance with the Senior Loan Documents, subject only to any grace period with respect to such sum provided in the Senior Loan Documents and without the additional grace period applicable to such Junior Lender with respect to the initial monetary default pursuant to this Section 12(b), but subject to any notice requirements under the Senior Loan Documents, provided, however, the curing Junior Lender shall not be required to pay default interest or late charges in respect of such sum accruing for the ten (10) Business Day period after receipt of the Senior Loan Default Notice. Each of the Junior Lenders shall only have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan no more than six (6) times in any consecutive twelve (12) month period unless Junior Lender making such cure payments has commenced and is continuing to diligently pursue its rights against such Junior Lender's Equity Collateral. In the event more than one Junior Lender cures any monetary default in accordance with the terms of this Section 12(b), Senior Lender hereby agrees (x) to accept the cure from the junior most Junior Lender and (y) to return to Senior Junior Lender within three (3) Business Days of accepting such cure from the junior most Junior Lender any funds tendered by Senior Junior Lender. The cure period for a Junior Lender with respect to a monetary default shall run concurrently with the cure period for the other Junior Lenders with respect to such monetary default and in no event shall such cure periods run sequentially. Notwithstanding the foregoing,

if a Junior Lender elects to pursue such cure of defaults involving monthly scheduled debt service payments as set forth above and thereafter either fails to make the required cure payments or fails to diligently pursue its rights against such Junior Lender's Equity Collateral, then notwithstanding any earlier election of the remaining Junior Lenders not to cure the defaults involving monthly scheduled debt service payments, the other Junior Lender shall be entitled to succeed to all such cure rights, upon written notice to Senior Lender, so long as such other Junior Lender promptly commences and thereafter diligently pursues its rights against its Equity Collateral to the extent required above and otherwise satisfies the provisions of this Section 12(b). If the default referenced in a Senior Loan Default Notice has been cured such that there is no longer an Event of Default under the Senior Loan Documents, Junior Lenders shall have the same Monetary Cure Period with respect to any future Senior Loan Default Notice. Senior Lender shall provide written notice to each Junior Lender following receipt of any payment received by Senior Lender that cures any outstanding Event of Default. Notwithstanding anything to the contrary contained herein, with respect to any cure of a Senior Loan effectuated by a Junior Lender in which such Junior Lender was not obligated to pay default interest and/or late fees, if such Junior Lender subsequently completes a foreclosure of such Junior Loan, Borrower (subsequent to the completion of such foreclosure) shall not be required to pay default interest or late fees as they relate to any default so cured.

(c) Senior Loan Non-Monetary Cure Period. If the default identified in a Senior Loan Default Notice is of a non-monetary nature, the Junior Lenders shall have the following cure periods (the "**Non-Monetary Cure Period**"):

(i) Mezzanine C Lender shall have until the later of (A) ten (10) Business Days after the receipt by Mezzanine C Lender of a Senior Loan Default Notice and (B) ten (10) Business Days after the expiration of Borrower's cure period, if any, for such non-monetary default provided in the Senior Loan Documents, to cure such non-monetary default;

(ii) If Mezzanine C Lender does not exercise the cure rights pursuant to clause (i) above, then Mezzanine B Lender shall have until the later of (A) ten (10) Business Days after the receipt by Mezzanine B Lender of notice from Senior Lender that Mezzanine C Lender failed to exercise the right to cure the default specified in a Senior Loan Default Notice and (B) fifteen (15) Business Days after the expiration of Borrower's cure period, if any, for such non-monetary default provided in the Senior Loan Documents, to cure such non-monetary default; and

(iii) if Mezzanine B Lender does not exercise the cure rights pursuant to (i) above, then Mezzanine A Lender shall have until the later of (A) ten (10) Business Days after the receipt by Mezzanine A Lender from Senior Lender of notice that Mezzanine B Lender failed to exercise the right to cure the default specified in a Senior Loan Default Notice and (B) twenty (20) Business Days after the expiration of Borrower's cure period, if any, for such non-monetary default provided in the Senior Loan Documents, to cure such non-monetary default.

Notwithstanding the applicable Non-Monetary Cure Period with respect to each Junior Lender, if (i) (x) a non-monetary default identified in a Senior Loan Default Notice is susceptible of cure

but cannot reasonably be cured within such applicable Non-Monetary Cure Period or (y) if not susceptible of cure without foreclosure of the Equity Collateral or not susceptible to cure at all, a Junior Lender is diligently pursuing foreclosure of its Equity Collateral (subject to any applicable stay) and (ii) curative action, which may include, in the case of a non-monetary default that is not susceptible of cure during the applicable Non-Monetary Cure Period, an Equity Collateral Enforcement Action, was promptly commenced and is being diligently pursued by a Junior Lender (subject to any applicable stay), such Junior Lender shall be given such additional period of time as is reasonably necessary for such Junior Lender in the exercise of due diligence to cure such non-monetary default (or to foreclose if the non-monetary default is not susceptible of cure without foreclosure of the Equity Collateral, or not susceptible to cure at all) for so long as (W) Borrower or such Junior Lender makes or causes to be made timely payment of Borrower's regularly scheduled monthly principal (if any) and interest payments under the Senior Loan and any other amounts due under the Senior Loan Documents (other than any late charges, late fees and default interest accruing other than by reason of any failure to make such regularly scheduled monthly principal (if any) and interest payments in a timely manner), (X) such additional period of time does not exceed ninety (90) days, unless such non-monetary default is of a nature that cannot be cured within such ninety (90) days, in which case, such Junior Lender shall have such additional time as is reasonably necessary to cure such non-monetary default, provided that such Junior Lender is continuously and diligently pursuing a cure of such non-monetary default, (Y) such default is not caused by a Proceeding of any Borrower Party, and (Z) during such Non-Monetary Cure Period or any extension thereof pursuant to this sentence, there is no material impairment to the value, use or operation of the Premises taken as a whole as reasonably determined by Senior Lender in good faith as a result of such non-monetary default that cannot be cured within five (5) Business Days following receipt of written notice by Junior Lender describing such material impairment in reasonable detail. If a Junior Lender has commenced exercising any such cure right during a Non-Monetary Cure Period and elects not to proceed with such cure, such Junior Lender shall promptly notify Senior Lender and, if applicable, each other Junior Lender, and each other Junior Lender shall be deemed in compliance with the terms hereof if it commences curing such event (which may include, in the case of a non-monetary default that is not susceptible of cure during the applicable Non-Monetary Cure Period, commencing an Equity Collateral Enforcement Action) within five (5) Business Days following receipt of written notice of such election not to proceed with such cure by such Subordinate Junior Lender and otherwise complies with the provisions of this Section 12(c). If a Subordinate Junior Lender is exercising its cure right pursuant to this Section 12(c), it shall use commercially reasonable efforts to consult with Senior Junior Lender and keep Senior Junior Lender informed as to its progress. The Non-Monetary Cure Period and any additional cure period granted hereunder to a Junior Lender electing to cure a non-monetary default of Borrower shall automatically terminate upon (x) the commencement of a voluntary Proceeding involving any Borrower Party, (y) a consent to an involuntary Proceeding by any Borrower Party or (z) the failure of any Borrower Party to have an involuntary Proceeding against it discharged, stayed or dismissed within ninety (90) days of filing thereof, unless in each case such Proceeding is dismissed, in which case the right will be reinstated from and after such dismissal to the extent the other conditions of this Section 12(c) are then satisfied.

(d) Senior Junior Loan Default Notice. Prior to accelerating a Senior Junior Loan or commencing any other Equity Collateral Enforcement Action by reason of an Event of Default under the related Senior Junior Loan Documents, the related Senior Junior Lender shall

provide written notice of the default which would permit such Senior Junior Lender to commence such Equity Collateral Enforcement Action to any Subordinate Junior Lender and any Loan Pledges entitled to notice thereof pursuant to Section 16, whether or not Senior Junior Lender is obligated to give notice thereof to the Senior Junior Borrower under the Senior Junior Loan (each, a “**Junior Loan Default Notice**”). Except in connection with a Maturity Default under a Senior Junior Loan, such Senior Junior Lender shall permit such Subordinate Junior Lender an opportunity to cure such default in accordance with the provisions of this Section 12 and shall not accelerate such Senior Junior Loan (other than pursuant to any automatic acceleration provided for in the related Senior Junior Loan Documents) or commence any other Equity Collateral Enforcement Action on account of such default unless such cure is not effectuated within the applicable cure period provided for in Section 12(e) or 12(f) below. In the event of a Maturity Default under a Senior Junior Loan, each Subordinate Junior Lender shall have the right to purchase such Senior Junior Loan (and all rights thereunder) pursuant to the terms, and subject to the conditions, provided in Section 14(c). Prior to or concurrently with undertaking any curative action with respect to a Senior Junior Loan, a Subordinate Junior Lender shall provide the related Senior Junior Lender with written notice thereof. At the request of a Subordinate Junior Lender, Senior Junior Lender shall keep such Subordinate Junior Lender reasonably apprised as to the status of any Equity Collateral Enforcement Action.

(e) Junior Loan Monetary Cure Period. If the default identified in a Junior Loan Default Notice is a monetary default relating to the payment of interest or scheduled principal (if any) or a liquidated sum of money, (i) each Subordinate Junior Lender shall have until ten (10) Business Days after the later of (A) the receipt by it from the applicable Senior Junior Lender of such Junior Loan Default Notice and (B) the expiration of the applicable Senior Junior Borrower’s cure period provided in the Senior Junior Loan Documents, if any, to cure such monetary default (such period, the “**Junior Loan Monetary Cure Period**”). In the event that a Subordinate Junior Lender elects to cure a monetary default under a Senior Junior Loan, (x) such Subordinate Junior Lender shall reimburse the applicable Senior Junior Lender for any interest charged by such Senior Junior Lender on any required (pursuant to an applicable pooling and servicing agreement or trust and servicing agreement or equivalent agreement) advances for such Senior Junior Loan (including Protective Advances) for amounts which the related Senior Junior Borrower would be obligated to pay under the related Senior Junior Loan Documents together with payment of all other amounts then due under such Senior Junior Loan Documents (excluding any late charges, late fees and default interest), and (y) during any Junior Loan Monetary Cure Period, with respect to any liquidated sum of money that becomes first due and payable during such Junior Loan Monetary Cure Period pursuant to such Senior Junior Loan Documents after the delivery of such Junior Loan Default Notice, such Subordinate Junior Lender shall pay such sum, in the amount notified to such Subordinate Junior Lender by such Senior Junior Lender, not more than five (5) Business Days after receipt of such notice from such Senior Junior Lender, in accordance with the Senior Junior Loan Documents, subject only to any grace period with respect to such amount provided in such Senior Junior Loan Documents and without the additional grace period applicable to such Subordinate Junior Lender with respect to the initial monetary default pursuant to this Section 12(e), but subject to any notice requirements under such Senior Junior Loan Documents with respect to such liquidated sum of money (and the receipt by such Junior Lender of such notice); provided, however, the curing Subordinate Junior Lender shall not be required to pay default interest or late charges in respect of such sum accruing for the ten (10) Business Day period after receipt of the Junior Loan

Default Notice. Each Subordinate Junior Lender shall only have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on a Senior Junior Loan no more than six (6) times in any consecutive twelve (12) month period unless such Subordinate Junior Lender making such cure payments has commenced and is continuing to diligently pursue its rights against such Subordinate Junior Lender's Equity Collateral. In the event more than one Subordinate Junior Lender cures any monetary default in accordance with the terms of this Section 12(e), the applicable Senior Junior Lender hereby agrees (x) to accept the cure from the junior-most Subordinate Junior Lender and (y) to return to any more senior Subordinate Junior Lender within two (2) Business Days of accepting such cure from the junior-most Subordinate Junior Lender any funds tendered by such more senior Subordinate Junior Lender. The cure period for a Subordinate Junior Lender with respect to a monetary default shall run concurrently with the cure period for each other Subordinate Junior Lender with respect to such monetary default and in no event shall such cure periods run sequentially. Notwithstanding the foregoing, if a Subordinate Junior Lender elects to pursue such cure of defaults involving monthly scheduled debt service payments as set forth above and thereafter either fails to make a required cure payment or fails to diligently pursue its rights against such Subordinate Junior Lender's Equity Collateral, then notwithstanding the earlier election of any remaining Subordinate Junior Lender not to cure such defaults involving monthly scheduled debt service payments, each such other Subordinate Junior Lender shall be entitled to succeed to all such cure rights, upon written notice to the Senior Junior Lender that is the holder of the Senior Junior Loan that is subject to the Event of Default, so long as such remaining Subordinate Junior Lender promptly commences and thereafter diligently pursues its rights against its Equity Collateral and otherwise satisfies the provisions of this Section 12(e). If the default referenced in a Junior Loan Default Notice has been cured such that there is no longer an Event of Default under the applicable Senior Junior Loan Documents, each applicable Subordinate Junior Lender shall have the same Junior Loan Monetary Cure Period with respect to any future Junior Loan Default Notice. The Senior Junior Lender that is the holder of the Senior Junior Loan that is subject to the Event of Default shall provide written notice to each Subordinate Junior Lender following receipt of any payment received by such Senior Junior Lender that cures any such Event of Default. Notwithstanding anything to the contrary contained herein, with respect to any cure of a Senior Junior Loan effectuated by a Subordinate Junior Lender in which such Subordinate Junior Lender was not obligated to pay default interest and/or late fees, if such Subordinate Junior Lender subsequently completes a foreclosure of such Senior Junior Loan, the applicable Senior Junior Borrower (subsequent to the completion of such foreclosure) shall not be required to pay default interest or late fees as they relate to any default so cured.

(f) Junior Loan Non-Monetary Cure Period. If the default identified in the Junior Loan Default Notice is of a non-monetary nature, the Subordinate Junior Lenders shall have the following cure periods (the "**Junior Loan Non-Monetary Cure Period**"):

(i) In the event that the Junior Loan Default Notice was given by Mezzanine A Lender, then: (1) Mezzanine C Lender shall have until the later of (A) ten (10) Business Days after the receipt by Mezzanine C Lender of a Junior Loan Default Notice from Mezzanine A Lender and (B) ten (10) Business Days after the expiration of Mezzanine A Borrower's cure period, if any, for such non-monetary default provided in the Mezzanine A Loan Documents, to cure such non-monetary default; and (2) If Mezzanine C Lender does not exercise the cure rights pursuant to clause (1) above, then

Mezzanine B Lender shall have until the later of (A) ten (10) Business Days after the receipt by Mezzanine B Lender of notice from Mezzanine A Lender that Mezzanine C Lender failed to exercise the right to cure the default specified in a Junior Loan Default Notice and (B) fifteen (15) Business Days after the expiration of Mezzanine A Borrower's cure period, if any, for such non-monetary default provided in the Mezzanine A Loan Documents, to cure such non-monetary default; and

(ii) In the event that the Junior Loan Default Notice was given by Mezzanine B Lender, then: Mezzanine C Lender shall have until the later of (A) ten (10) Business Days after the receipt by Mezzanine C Lender of a Junior Loan Default Notice from Mezzanine B Lender and (B) ten (10) Business Days after the expiration of Mezzanine B Borrower's cure period, if any, for such non-monetary default provided in the Mezzanine B Loan Documents, to cure such non-monetary default.

Notwithstanding the applicable Junior Loan Non-Monetary Cure Period, if such non-monetary default is susceptible of cure (prior to or after completion of an Equity Collateral Enforcement Action) but cannot reasonably be cured within the Junior Loan Non-Monetary Cure Period or, if not susceptible of cure without foreclosure on the Equity Collateral or not susceptible to cure at all, Subordinate Junior Lender is diligently pursuing foreclosure of its Equity Collateral, and (y) curative action which may include, in the case of a non-monetary default that is not susceptible of cure during the applicable Junior Loan Non-Monetary Cure Period, an Equity Collateral Enforcement Action, was promptly commenced and is being diligently pursued by such Subordinate Junior Lender, such Subordinate Junior Lender shall be given an additional period of time as is reasonably necessary for such Subordinate Junior Lender in the exercise of due diligence to cure such non-monetary default (or to foreclose in the non-monetary default is not susceptible of cure without foreclosure of the Equity Collateral or not susceptible of cure at all) for so long as (A) such Subordinate Junior Lender makes or causes to be made timely payment of such Senior Junior Borrower's regularly scheduled monthly principal and interest payments under the related Senior Junior Loan and any other amounts due under the related Senior Junior Loan Documents (other than any late charges, late fees and default interest accruing other than by reason of any failure by Subordinate Junior Lender to make such regularly scheduled monthly principal (if any) and interest payments in a timely manner), (B) such additional period of time does not exceed ninety (90) days, unless such non-monetary default is of a nature that cannot be cured within such ninety (90) days, in which case, such Subordinate Junior Lender shall have such additional time as is reasonably necessary to cure such non-monetary default, provided that such Subordinate Junior Lender is continuously and diligently pursuing a cure of such non-monetary default, (C) such default is not caused by a Proceeding of such Senior Junior Borrower, and (D) during such Junior Loan Non-Monetary Cure Period, there is no material impairment to the value of the applicable Senior Junior Lender's Equity Collateral as reasonably determined by the applicable Senior Junior Lender in good faith as a result of such non-monetary default that cannot be cured within five (5) Business Days following receipt of written notice by Subordinate Junior Lender describing such material impairment in reasonable detail. If a Subordinate Junior Lender has commenced exercising any such cure right during a Junior Loan Non-Monetary Cure Period and elects not to proceed with such cure, such Subordinate Junior Lender shall promptly notify each remaining Subordinate Junior Lender, and each remaining Subordinate Junior Lender shall be deemed in compliance with the terms hereof if it commences curing such event within five (5) Business Days following

receipt of written notice of such election not to proceed with such cure by the Subordinate Junior Lender that precedes it in priority of cure right pursuant to this Section 12(f) and otherwise complies with the provisions of this Section 12(f). If there are multiple Subordinate Junior Lenders in any such situation, their order of priority with respect to further cure rights shall be as described in Section 12(e). The Junior Loan Non-Monetary Cure Period and any additional cure period granted hereunder to a Subordinate Junior Lender electing to cure a non-monetary default shall automatically terminate upon (x) the commencement of a voluntary Proceeding involving any Borrower Party or any applicable Senior Junior Borrower, (y) a consent or acquiescence to an involuntary Proceeding by any Borrower Party or any applicable Senior Junior Borrower, or (z) the failure of any Borrower Party or any applicable Senior Junior Borrower to have an involuntary Proceeding against it or Senior Junior Borrower (other than involuntary Proceedings described in clause (y) of this sentence) discharged, stayed or dismissed within ninety (90) days of the filing thereof, unless in each case such Proceeding is dismissed, in which case any unexpired portion of the Junior Loan Non-Monetary Cure Period (or such additional cure period, as applicable) will be reinstated from and after such dismissal to the extent the other conditions of this Section 12(f) are then satisfied.

(g) No Senior Loan Event of Default. So long as no Continuing Event of Default shall have occurred and be continuing under the Senior Loan Documents, all funds held and applied pursuant to the Cash Management Agreement and Senior Loan Agreement, including, without limitation, during any Cash Sweep Period, shall continue to be applied pursuant thereto and shall not be applied by Senior Lender to prepay the outstanding principal balance of the Senior Loan.

(h) Copies of Default Notices. (i) Each Junior Lender shall give Senior Lender and the other Junior Lenders notice of any Event of Default under the related Junior Loan, acceleration of its applicable Junior Loan, transfer of the Junior Loan to “special servicing” and/or the commencement of any Equity Collateral Enforcement Action under its Junior Loan Documents and, simultaneously with giving such notices to its Junior Borrower, copies of notices given to its Junior Borrower of events that with the passage of time and failure to cure, would result in the occurrence of a “Default” or “Event of Default” under its respective Junior Loan Documents.

(ii) Senior Lender shall give each Junior Lender written notice of any Event of Default, acceleration of the Senior Loan, transfer of the Senior Loan to “special servicing” and/or the commencement of an Enforcement Action under the Senior Loan Documents and, simultaneously with giving such notices to any Borrower Party, copies of notices given to such Borrower Party of events that with the passage of time and failure to cure, would result in the occurrence of a “Default” or “Event of Default” under the Senior Loan Documents.

(i) Simultaneous Cure of Senior Junior Loan. Notwithstanding anything to the contrary herein, in the event that a Subordinate Junior Lender shall exercise its right under this Section 12 to cure any default (whether monetary or non-monetary, but excluding a Maturity Default) under the Senior Loan and at the time of such cure an Event of Default with respect to any Senior Junior Loan shall be continuing, then such Subordinate Junior Lender shall also be required to concurrently cure (or, in the case of a non-monetary default, commence and

diligently pursue a cure of) each Event of Default (whether monetary or non-monetary, but excluding a Maturity Default) under such Senior Junior Loan. Senior Lender may not accept a cure of a default (whether monetary or non-monetary) under the Senior Loan without notice from the applicable Senior Junior Lender that such Subordinate Junior Lender has cured or will concurrently commence and diligently pursue a cure of each Event of Default (whether monetary or non-monetary) under the related Senior Junior Loan in accordance with the terms of this Section 12.

(j) In the event that a Junior Lender makes any cure payment in accordance with this Section 12 and all or any portion of such amount is paid by Borrower or any other Person on Borrower's behalf to Senior Lender, and so long as no other monetary Event of Default under the Senior Loan then exists, Senior Lender shall promptly remit such payment (or such portion of such payment up to the amount paid by such Junior Lender in connection with the applicable cure) to such Junior Lender.

Section 13. TERMINATION OF PROPERTY MANAGER.

(a) Senior Lender consents to each Junior Lender's right pursuant to the related Junior Loan Documents, and each Junior Lender consents to Senior Lender's right pursuant to the Senior Loan Documents and the other Junior Lender's right pursuant to the applicable Junior Loan Documents, to cause the termination of the Property Manager, and the exercise of (or election not to exercise) such right shall not (in and of itself) permit Senior Lender or any Junior Lender to declare an Event of Default under the Senior Loan Documents or Junior Loan Documents or take any Enforcement Action or Equity Collateral Enforcement Action. In the event Senior Lender and one or more Junior Lenders shall have the right to so terminate the Property Manager, and Senior Lender shall fail to exercise (or fail to elect not to exercise) such rights, a Junior Lender may exercise such rights, provided such exercise may be superseded by any subsequent exercise of such rights by Senior Lender pursuant to the Senior Loan Documents or, in the case of Subordinate Junior Lender, by a Senior Junior Lender pursuant to the Senior Junior Loan Documents. Notwithstanding anything in this Section 13 to the contrary, if the right of Senior Lender (or Senior Junior Lender, as the case may be) to cause the termination of the Property Manager arises solely from an event of default by the Property Manager under the related Management Agreement, then Senior Lender shall obtain the consent of each Junior Lender (and Senior Junior Lender shall obtain the consent of Subordinate Junior Lender) in the event that Senior Lender (or Senior Junior Lender, as applicable) elects not to exercise such right and thereby to retain the Property Manager as the property manager of the Premises notwithstanding such event of default.

(b) Notwithstanding anything in this Section 13 to the contrary, if an Event of Default under the Senior Loan then exists or any other event shall have occurred (in each case which is not in the process of being cured by a Junior Lender as permitted hereby) pursuant to which Senior Lender has the right to cause the termination of the Property Manager pursuant to the Senior Loan Documents (or, at Senior Lender's option, to elect not to exercise such right and to retain the then-current Property Manager), Senior Lender shall have the sole right to elect not to exercise such right and to retain the then-current Property Manager (and in such case shall notify each Junior Lender of such election).

(c) Notwithstanding anything in this Section 13 to the contrary but subject to Senior Lender's rights and the other terms and conditions of Section 13(a) and Section 13(b) above, if an Event of Default under a Senior Junior Loan then exists or any other event shall have occurred (in each case which is not in the process of being cured by a Subordinate Junior Lender as permitted hereby) pursuant to which the related Senior Junior Lender has the right to cause the termination of the Property Manager pursuant to the applicable Senior Junior Loan Documents (or, at such Senior Junior Lender's option, to elect not to exercise such right and to retain the then-current Property Manager), the most senior Senior Junior Lender shall have the sole right as between such Senior Junior Lender and each Subordinate Junior Lender to elect not to exercise such right and to retain the then-current Property Manager (and in such case shall notify each Subordinate Junior Lender of such election).

(d) Notwithstanding anything contained in this Section 13 to the contrary, (i) Senior Lender shall not exercise its right to cause the termination of the Property Manager under the Senior Loan Documents unless a Continuing Event of Default shall have occurred and be continuing with respect to the Senior Loan and (ii) a Senior Junior Lender shall not exercise its right to cause the termination of the Property Manager under the Senior Junior Loan Documents unless a Continuing Event of Default shall have occurred and be continuing with respect to the related Senior Junior Loan.

Section 14. RIGHT TO PURCHASE SENIOR LOAN AND THE SENIOR JUNIOR LOAN.

(a) If (1) an Event of Default has occurred under the Senior Loan, (2) the Senior Loan has been accelerated, (3) any Enforcement Action has been commenced under the Senior Loan Documents, (4) a Proceeding has been commenced against any Borrower Party, or (5) the Senior Loan is a "specially serviced mortgage loan" under the applicable pooling and servicing agreement or trust and servicing agreement as the result of a monetary or material non-monetary Event of Default under the Senior Loan (each of the foregoing, a "**Purchase Option Event**"), Senior Lender agrees to provide prompt written notice of the existence of a Purchase Option Event to Junior Lenders (the "**Purchase Option Notice**") (provided that, in no case shall Senior Lender be obligated to send more than one (1) such Purchase Option Notice to each Junior Lender in respect of any single event or occurrence as to which such Purchase Option Event relates), and upon ten (10) Business Days' prior written notice to Senior Lender and the other Junior Lenders (a "**Purchase Election Notice**") each Junior Lender (individually or collectively pursuant to any applicable Co-Lender Agreement) shall have the right to purchase at any time for cash, in whole but not in part, the Senior Loan for a price equal to the sum of (without duplication) the outstanding principal balance thereof (at the time of purchase), together with all accrued and unpaid interest, and all other amounts due thereon (including, without limitation, (i) any unreimbursed required (pursuant to an applicable pooling and servicing agreement or trust and servicing agreement in connection with a Securitization) advances (including Protective Advances) made by Senior Lender or any servicer for amounts which Borrower is obligated to pay under the Senior Loan Documents, (ii) post-petition interest at non-default rates, (iii) any interest charged by Senior Lender or any servicer on any required (pursuant to an applicable pooling and servicing agreement or trust and servicing agreement in connection with a Securitization) advances, (iv) any workout fee, special servicing fee or liquidation fee payable to the special servicer pursuant to a pooling and servicing agreement or

trust and servicing agreement in connection with a Securitization, provided, that (w) in no event shall (1) special servicing fees exceed 0.25% per annum and (2) both a workout fee and a liquidation fee be payable on the same principal payment, (x) any workout fees to the extent they exceed one-half of one percent (0.5%) of each collection of interest and principal received on the Senior Loan shall be excluded, (y) any liquidation fee to the extent it exceeds one half of one percent (0.5%) of any liquidation proceeds received on the Senior Loan shall be excluded, and (z) any such workout fee or liquidation fees shall be excluded if the Senior Loan is purchased within ninety (90) days of the date on which the applicable Purchase Option Notice was first given to the applicable Junior Lender, and (v) all reasonable and out-of-pocket costs and expenses (including reasonable legal fees and expenses) actually incurred by Senior Lender in enforcing the terms of the Senior Loan Documents, but in all events excluding any yield maintenance premiums, prepayment fees or premiums, any exit fees, any liquidated damage amount, any spread maintenance charges, any late charges or any default interest (the “**Loan Purchase Price**”). Notwithstanding the foregoing but subject to the terms of the last sentence of this Section 14(a), the failure of Senior Lender to timely provide a Purchase Option Notice to any Junior Lender regarding the occurrence of a Purchase Option Event shall have no adverse effect on Senior Lender other than the resulting extension of the time in which the Purchase Election Notice may be given. Promptly following receipt of a Purchase Election Notice Senior Lender shall deliver to the applicable Junior Lender a payoff letter for the Senior Loan setting forth the Loan Purchase Price. In the event that more than one Junior Lender elects to purchase the Senior Loan pursuant to this Section 14(a), the most junior Subordinate Junior Lender shall have the exclusive right to so purchase the Senior Loan, provided that such Subordinate Junior Lender shall also be required to concurrently purchase each Senior Junior Loan from the applicable Senior Junior Lender for a price equal to the sum of (without duplication) the outstanding principal balance thereof at the time of purchase, together with all accrued and unpaid interest, and all other amounts due thereon (including, without limitation, (i) any unreimbursed Protective Advances required to be made (pursuant to an applicable trust and servicing agreement or equivalent agreement) by such Senior Junior Lender or any servicer for amounts which the related Senior Junior Borrower is obligated to pay under such Senior Junior Loan Documents and post-petition interest at non-default rates, (ii) any interest charged by such Senior Junior Lender or any servicer on any advances on such Senior Junior Loan for amounts which such Senior Junior Borrower would be obligated to pay under the Senior Junior Loan Documents, and (iii) all reasonable and out-of-pocket costs and expenses (including reasonable legal fees and expenses) actually incurred by such Senior Junior Lender in enforcing the terms of the related Senior Junior Loan Documents, but in all events excluding any yield maintenance premiums, prepayment fees or premiums, any exit fees, any liquidated damage amount, any spread maintenance charges, any late charges or any default interest) (the “**Senior Junior Loan Purchase Price**”). A Subordinate Junior Lender may not close the purchase of the Senior Loan without concurrently closing the purchase of each applicable Senior Junior Loan in accordance with the terms of this Section 14. If a Subordinate Junior Lender, after electing to purchase the Senior Loan, fails to complete such purchase within ten (10) Business Days of delivery of a Purchase Election Notice (other than as a result of a default or breach by a seller of the Senior Loan) or fails to concurrently purchase each applicable Senior Junior Loan as required hereunder (other than as a result of a default or breach by the seller of such Senior Junior Loan), then such Purchase Election Notice shall be deemed invalid, such Subordinate Junior Lender shall cease to have any right to purchase the Senior Loan (and each applicable Senior Junior Loan) in

connection with the applicable Purchase Option Event and each remaining Junior Lender shall thereafter be entitled to exercise its purchase rights under, and in accordance with, this Section 14(a). Concurrently with payment to Senior Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered to the Junior Lender exercising the purchase right hereunder (x) the original Senior Note and all Senior Loan Documents held by or on behalf of Senior Lender, (y) assignment documentation, in form and substance reasonably acceptable to such Junior Lender, at the sole cost and expense of such Junior Lender, executed by Senior Lender in favor of such Junior Lender (or its designee), to assign the Senior Loan and its rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the Senior Loan (including principal and accrued but unpaid interest), power and authority to enter into the applicable assignment documentation and as to Senior Lender's ownership free and clear of all liens, claims or encumbrances and not having previously Transferred its rights in the Senior Loan as of the consummation of the assignment of the Senior Loan), and (z) all letters of credit or funds held in any escrow or reserve accounts as security for the Senior Loan. Concurrently with payment to a Senior Junior Lender of the Senior Junior Loan Purchase Price for the applicable Senior Junior Loan, such Senior Junior Lender shall deliver or cause to be delivered to the applicable Subordinate Junior Lender (x) the original Senior Junior Note and all Senior Junior Loan Documents held by or on behalf of such Senior Junior Lender, (y) assignment documentation, in form and substance reasonably acceptable to such Subordinate Junior Lender, at the sole cost and expense of such Subordinate Junior Lender, executed by Senior Junior Lender in favor of such Subordinate Junior Lender (or its designee), to assign such Senior Junior Loan and its rights under the related Senior Junior Loan Documents (without recourse, representations or warranties, except for several representations from each Person then constituting such Senior Junior Lender as to the outstanding balance of such Senior Junior Loan (including principal and accrued but unpaid interest), such Person's respective power and authority to enter into the applicable assignment documentation and as to such Person's respective ownership free and clear of all liens, claims or encumbrances and not having previously Transferred such Person's respective interests in such Senior Junior Loan as of the consummation of the assignment of the Senior Junior Loan), and (z) all letters of credit or funds held in any escrow or reserve accounts as security for the Senior Junior Loan. The right of each Junior Lender to purchase the Senior Loan (and, in the case of each Subordinate Junior Lender, each applicable Senior Junior Loan) shall automatically terminate (x) to the extent such right arose with respect to a specific Purchase Option Event, if such Purchase Option Event ceases to exist (including, if Senior Lender terminated its Enforcement Action and no other Purchase Option Event exists), or (y) upon a Transfer of all of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure in accordance with Section 14(b) below; provided, however, that, with respect to this clause (y), in no event shall either Junior Lender have less than thirty (30) days following receipt of a Purchase Option Notice to deliver a Purchase Election Notice, it being acknowledged and agreed that each Junior Lender shall be entitled to bid at foreclosure as permitted by applicable law.

(b) Notwithstanding anything to the contrary contained herein, but subject to the last sentence of this Section 14(b), Senior Lender and the Junior Lenders agree that:

(i) Senior Lender shall not accept (or cause any nominee or designee to accept) a deed-in-lieu of foreclosure without first providing each Junior Lender with at least twenty-five (25) Business Days' prior written notice (a "**DIL Notice**") of Senior

Lender's good faith intention to accept a deed-in-lieu within the forty-five (45) day period following delivery of such DIL Notice, provided, however, a DIL Notice may not be issued by Senior Lender prior to the occurrence of a Purchase Option Event and delivery of a Purchase Option Notice;

(ii) for fourteen (14) Business Days following the delivery of a DIL Notice, a Junior Lender or its designee shall have the right, upon notice to Senior Lender, to simultaneously purchase (x) the Senior Loan for the Loan Purchase Price and otherwise in accordance with the above provisions of this Section 14, and (y) each applicable Senior Junior Loan (if any) for the Senior Junior Loan Purchase Price;

(iii) if two or more Junior Lenders give notice to Senior Lender pursuant to the immediately preceding subparagraph (ii) following delivery of a DIL Notice (and regardless of which Junior Lender is the first to give such notice), then the most junior Subordinate Junior Lender shall have the exclusive right, during the twelve (12) Business Days following such Subordinate Junior Lender's notice, to purchase the Senior Loan for the Loan Purchase Price and each applicable Senior Junior Loan for the applicable Senior Junior Loan Purchase Price, and, in each case, otherwise in accordance with the provisions of Section 14(a) above (it being agreed that in no event shall Subordinate Junior Lender close its purchase of the Senior Loan and each applicable Senior Junior Loan prior to the date that is the earlier of (I) the fourteenth (14th) Business Day following delivery of a DIL Notice and (II) thirty (30) days after delivery of the applicable Purchase Option Notice, and then may do so only if such Subordinate Junior Lender giving notice pursuant to the immediately preceding subparagraph (ii) fails to purchase the Senior Loan and each applicable Senior Junior Loan prior to such date, other than by reason of the default of the Senior Lender or the applicable Senior Junior Lender, as applicable);

(iv) if neither a Subordinate Junior Lender nor a Senior Junior Lender consummates the purchases described in the immediately preceding subparagraphs (ii) and (iii), respectively, within the respective periods of time provided in such subparagraphs (other than by reason of the default of Senior Lender), Senior Lender shall have the right, for thirty (30) days after the expiration of such twenty-five (25) Business Day period, to accept such deed-in-lieu of foreclosure; and

(v) if Senior Lender does not accept such deed-in-lieu of foreclosure prior to the expiration of such thirty (30) day period described in the immediately preceding subparagraph (iv), Senior Lender shall thereafter not accept a deed-in-lieu of foreclosure without again complying with all of the provisions of this Section 14(b).

Notwithstanding anything to the contrary in the foregoing, (i) Senior Lender may not give a DIL Notice during any Monetary Cure Period or Non-Monetary Cure Period, (ii) if Senior Lender delivers a DIL Notice following the date on which it sends to Junior Lenders a Purchase Option Notice, then the provisions of this Section 14(b) shall govern (in lieu of any provisions in Section 14(a) above) until the expiration of the twenty-five (25) Business Day period referred to in this Section 14(b), and (iii) if no Junior Lender has effected a purchase as described in this Section 14(b) by the close of business on the twenty-fifth (25th) Business Day period referred to

in this Section 14(b), then the provisions of Sections 14(a) and 14(b) shall once again apply for so long as Senior Lender has not accepted (or caused any nominee or designee to accept) a deed-in-lieu of foreclosure. If Senior Lender has complied with the foregoing provisions in this Section 14(b) and no Junior Lender has consummated the purchase of the Senior Loan pursuant to this Section 14(b), then each Junior Lender shall be deemed to have consented to the deed-in-lieu of foreclosure and, contemporaneously with the expiration of the twenty-five (25) Business Day period referred to in this Section 14(b), each Junior Lender shall provide written consent of the deed-in-lieu of foreclosure to the applicable Junior Borrower as required pursuant to Section 5.1.32 of the applicable Junior Loan Agreement.

(c) If (1) an Event of Default has occurred under a Senior Junior Loan, (2) a Senior Junior Loan has been accelerated, (3) any Equity Collateral Enforcement Action has been commenced under the Senior Junior Loan Documents, (4) a Proceeding has been commenced against a Senior Junior Borrower under the related Senior Junior Loan, or (5) the Senior Junior Loan is a “specially serviced loan” under the applicable pooling and servicing agreement or trust and servicing agreement as the result of a monetary or material non-monetary Event of Default under the Senior Junior Loan (each of the foregoing, a “**Junior Purchase Option Event**”), the related Senior Junior Lender shall provide prompt written notice of the same to each Subordinate Junior Lender (the “**Junior Purchase Option Notice**”) (provided that, in no case shall Senior Junior Lender be obligated to send more than one (1) Junior Purchase Option Notice in respect of any single event or occurrence as to which such Event of Default or Enforcement Action relates), and upon ten (10) Business Days’ prior written notice to such Senior Junior Lender (a “**Junior Purchase Election Notice**”), each Subordinate Junior Lender shall have the right to purchase for cash, in whole but not in part, such Senior Junior Loan (the “**Optioned Junior Loan**”) for the Senior Junior Loan Purchase Price. Notwithstanding the foregoing, but subject to the terms of the last sentence of this Section 14(c), the failure of a Senior Junior Lender to timely provide notice to any Subordinate Junior Lender of the occurrence of a Junior Purchase Option Event shall have no adverse effect on such Senior Junior Lender other than the resulting extension of the time in which the Junior Purchase Election Notice may be given. In the event that more than one Junior Lender elects to purchase the Optioned Junior Loan pursuant to this Section 14(c), the most junior Subordinate Junior Lender shall have the exclusive right to so purchase the Optioned Junior Loan, provided that such Subordinate Junior Lender shall also be required to concurrently purchase any Senior Junior Loan more junior to the Optioned Junior Loan from the applicable Senior Junior Lender for a price equal to the applicable Senior Junior Loan Purchase Price. A Subordinate Junior Lender may not close the purchase of the Optioned Junior Loan without concurrently closing the purchase of each applicable Senior Junior Loan more junior to the Optioned Junior Loan in accordance with the terms of this Section 14. If any Subordinate Junior Lender has elected to purchase the Optioned Junior Loan that is subject to the applicable Junior Purchase Option Event fails to complete such purchase within ten (10) Business Days of delivery of a Junior Purchase Election Notice (other than as a result of a default or breach by a seller of the Senior Junior Loan), then such Junior Purchase Election Notice shall be deemed invalid, and such Subordinate Junior Lender shall cease to have any right to purchase the Optioned Junior Loan in connection with the applicable Junior Purchase Option Event and each remaining Subordinate Junior Lender shall thereafter be entitled to exercise its purchase rights under, and in accordance with, this Section 14(c). Concurrently with payment to a Senior Junior Lender of the Senior Junior Loan Purchase Price, such Senior Junior Lender shall deliver or cause to be delivered to the applicable Subordinate Junior Lender all Senior Junior Loan Documents held by

or on behalf of such Senior Junior Lender and will execute in favor of such Subordinate Junior Lender (or its designee) assignment documentation, in form and substance reasonably acceptable to such Subordinate Junior Lender, at the sole cost and expense of such Subordinate Junior Lender, to assign such Senior Junior Loan and its rights under the Senior Junior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of such Senior Junior Loan (including principal and accrued but unpaid interest), power and authority to enter into the applicable assignment documentation and as to such Senior Junior Lender's ownership free and clear of all liens, claims or encumbrances and not having previously Transferred its rights in such Senior Junior Loan as of the consummation of the assignment of such Senior Junior Loan, unless any applicable participation or encumbrance will be released prior to the Transfer). The right of a Subordinate Junior Lender to purchase a Senior Junior Loan shall automatically terminate (x) to the extent such right arose with respect to a specific Junior Purchase Option Event, if such Junior Purchase Option Event ceases to exist (including, if the applicable Senior Junior Lender terminated its Equity Collateral Enforcement Action and no other Junior Purchase Option Event then exists), or (y) upon a Transfer of the Equity Collateral covered by the applicable Senior Junior Loan Documents pursuant to any Equity Collateral Enforcement Action; provided, however, that, with respect to this clause (y), in no event shall a Subordinate Junior Lender have less than thirty (30) days following receipt of a Junior Purchase Option Notice to deliver a Junior Purchase Election Notice, it being acknowledged and agreed that each Subordinate Junior Lender shall be entitled to bid at foreclosure as permitted by applicable law.

(d) Notwithstanding anything to the contrary contained herein, but subject to the last sentence of this Section 14(d), Senior Junior Lender and Subordinate Junior Lender agree that:

(i) Senior Junior Lender shall not accept (or cause any nominee or designee to accept) a conveyance in lieu of foreclosure without first providing Subordinate Junior Lender with at least twelve (12) Business Days prior written notice (a "**CIL Notice**") of Senior Junior Lender's good faith intention to accept a conveyance-in-lieu within the thirty (30) day period following such notice, provided, however, a CIL Notice may not be issued by a Senior Junior Lender prior to the occurrence of a Junior Purchase Option Event and the delivery of a Junior Purchase Option Notice;

(ii) for fourteen (14) Business Days following the delivery of a CIL Notice, a Subordinate Junior Lender or its designee shall have the right, upon notice to the Senior Junior Lenders, to simultaneously purchase each applicable Senior Junior Loan for the applicable Senior Junior Loan Purchase Price and otherwise in accordance with the above provisions of this Section 14;

(iii) if two or more Subordinate Junior Lenders gives notice to Senior Junior Lender pursuant to the immediately preceding subparagraph (ii) following delivery of a CIL Notice, then the most junior Subordinate Junior Lender shall have the exclusive right, during the twelve (12) Business Days following Subordinate Junior Lender's notice, to purchase each applicable Senior Junior Loan for the applicable Senior Junior Loan Purchase Price, and otherwise in accordance with the provisions of Section 14(c) above (it being agreed that in no event shall a Subordinate Junior Lender close its

purchase of the applicable Senior Junior Loan prior to the date that is the earlier of (I) the fourteenth (14th) Business Day following delivery of a CIL Notice and (II) thirty (30) days after delivery of the applicable Junior Purchase Option Notice, and then may do so only if each Subordinate Junior Lender giving notice pursuant to the immediately preceding subparagraph (ii) fails to purchase each applicable Senior Junior Loan prior to such date, other than by reason of the default of the applicable Senior Junior Lender);

(iv) if Subordinate Junior Lender fails to consummate such purchases during such twelve (12) Business Day period (other than by reason of the default of the applicable Senior Junior Lender), such Senior Junior Lender shall have the right, for thirty (30) days after the expiration of the twelve (12) Business Day period, to accept such conveyance-in-lieu of foreclosure; and

(v) if such Senior Junior Lender does not accept such conveyance-in-lieu of foreclosure prior to the expiration of such thirty (30) day period described in the immediately preceding subparagraph (iv), such Senior Junior Lender shall thereafter not accept a conveyance-in-lieu of foreclosure without again complying with all of the provisions of this Section 14(d).

(vi) Notwithstanding anything to the contrary in the foregoing, (i) no Senior Junior Lender may give a CIL Notice during any Junior Loan Monetary Cure Period or Junior Loan Non-Monetary Cure Period, (ii) if a Senior Junior Lender delivers a CIL Notice following the date on which it sends to the Subordinate Junior Lenders a Junior Loan Purchase Notice, then the provisions of this Section 14(d) shall govern (in lieu of any provisions in Section 14(c) above) until the expiration of the twelve (12) Business Day period referred to in this Section 14(d) and (iii) if no Subordinate Junior Lender has effected a purchase as described in this Section 14(d) by the close of business on the fourteen (14) Business Day period referred to in this Section 14(d), then the provisions of Sections 14(c) and 14(d) shall once again apply for so long as Senior Junior Lender has not accepted (or caused any nominee or designee to accept) a conveyance-in-lieu of foreclosure.

(vii) If Senior Junior Lender has complied with the foregoing provisions in this Section 14(d) and no Subordinate Junior Lender has consummated the purchase of the Senior Junior Loan pursuant to this Section 14(d), then each Subordinate Junior Lender shall be deemed to have consented to the conveyance-in-lieu of foreclosure and, contemporaneously with the expiration of the twelve (12) Business Day period referred to in Section 14(d)(i) or (iv), as applicable, each Subordinate Junior Lender shall provide written consent of the conveyance-in-lieu of foreclosure to the applicable Junior Borrower as required pursuant to Section 5.1.32 of the applicable Junior Loan Agreement.

(e) Each Junior Lender covenants not to enter any agreement with Borrower or any Junior Borrower or any respective Affiliate of any of the foregoing to purchase the Senior Loan or any Junior Loan pursuant to this Section 14 or in connection with any refinancing of the Senior Loan or any Junior Loan in any manner designed to avoid or circumvent the provisions of the Senior Loan Documents or any of the Junior Loan Documents relating to the payment of a

prepayment fee, exit fee, late charge, default interest, liquidated damages or yield maintenance charge in connection with a prepayment of the Senior Loan or a Junior Loan.

Section 15. ADDITIONAL UNDERSTANDING.

For as long as a Junior Loan remains outstanding:

(a) Notices of Transfer. Senior Lender and each Junior Lender shall promptly notify Senior Lender and the other Junior Lenders if Borrower, any Junior Borrower or any Affiliate of Borrower or any Junior Borrower seeks or requests from such Person, as applicable, a release of all or any portion of any lien arising pursuant to any of the Senior Loan Documents or any related Junior Loan Documents or seeks or requests such Person's consent to, or takes any action in connection with or in furtherance of, a Transfer of all or any portion of the Premises, the granting of a further mortgage, deed of trust, pledge or other encumbrance against the Premises or any related Separate Collateral, a Transfer of any interest in Borrower or any Junior Borrower, a prepayment or refinancing of the Senior Loan or any Junior Loan, or the purchase of all or any portion of the Senior Loan or any Junior Loan. In connection with any Transfer of the Premises or any portion thereof or any Transfer of any interest in Borrower or any Junior Borrower by another Junior Borrower after the occurrence of an Event of Default under the Senior Loan or any Junior Loan, Senior Lender and Senior Junior Lender will cause, to the extent it has such rights under the Senior Loan Documents or the applicable Junior Loan Documents, all amounts in excess of amounts due on the Senior Loan or the Junior Loan held by such Junior Lender to be applied toward amounts outstanding under the Junior Loans, if required by the terms of any of the related Junior Loan Documents, in the order of priority of the outstanding Junior Loans. Nothing in this Section 15(a) shall limit any consent rights of Senior Lender or any Junior Lender with respect to Transfers under the Senior Loan Documents or Transfers (as respectively defined in each Junior Loan Agreement) under the applicable Junior Loan Documents, as applicable.

(b) Annual Budget. Subject to the terms of the applicable Junior Loan Documents, each Junior Lender shall have the right to reasonably approve the annual operating budget for the Premises in accordance with the terms of the applicable Junior Loan Documents. Notwithstanding anything contained herein, in the Senior Loan Documents or in the Junior Loan Documents, each Junior Lender may require the related Borrower to submit the annual budget to such Junior Lender for approval prior to any submission to Senior Lender. The provisions of this Section 15(b) shall not limit or alter the rights of Senior Lender with respect to Borrower pursuant to the Senior Loan Documents or any Junior Lender with respect to its respective Junior Borrower pursuant to the applicable Junior Loan Documents.

(c) Consent Rights of Lenders. If any of the Senior Loan Documents or Junior Loan Documents contain any provision or requirement that a Lender's consent or approval be obtained for any action or determination by any Borrower in connection with the Property, each Lender acknowledges and agrees that it shall have the right to make the decision to consent or approve such action independently. The provisions of this Section 15(c) shall not limit or alter the rights of Senior Lender with respect to Borrower pursuant to the Senior Loan Documents or any Junior Lender with respect to its respective Junior Borrower pursuant to the applicable Junior Loan Documents.

(d) Notices. Senior Lender shall provide each Junior Lender with prompt notice of any change to the identity of the servicer of the Senior Loan.

(e) Cash Management Period. Senior Lender shall consult with Junior Lenders with respect to any determination that a Cash Sweep Period (other than a Cash Sweep Period caused by a Mezzanine Loan Default which such event shall have conclusively occurred upon the applicable Junior Lender's delivery of a notice of the occurrence of an Event of Default as required hereunder, and for which no subjective determination is required) is in effect, provided that such consultation shall not be binding on Senior Lender's determination thereof. Notwithstanding the foregoing, if Senior Lender has not acted, then each Junior Lender shall have the right to give notice to Senior Lender that such Junior Lender has determined, in its reasonable judgment made in accordance with the terms of the Senior Loan Agreement, that a Cash Sweep Period has commenced. If Senior Lender disagrees with such Junior Lender's determination, it shall notify such Junior Lender of such disagreement and provide the basis for such disagreement. If, upon receipt of such notice, Senior Lender reasonably concurs with such Junior Lender's reasonable determination with respect to the commencement of a Cash Sweep Period, it shall notify Borrower that a Cash Sweep Period has commenced. Senior Lender shall consult with Junior Lenders with respect to a determination that a Cash Sweep Event Cure has occurred in accordance with the provisions of the Senior Loan Agreement (whether the related Cash Sweep Period was initiated by Senior Lender or a Junior Lender). Each Junior Lender shall have the right to give notice to Senior Lender that such Junior Lender has determined, in its reasonable judgment made in accordance with the terms of the Senior Loan Documents, whether a Cash Sweep Event Cure has occurred. If Senior Lender disagrees with such Junior Lender's determination, it shall notify such Junior Lender of such disagreement and provide the basis for such disagreement. If, upon receipt of such notice, Senior Lender reasonably concurs with such Junior Lender's reasonable determination with respect to the occurrence of a Cash Sweep Event Cure, it shall notify Borrower that a Cash Sweep Event Cure has occurred, provided that no such determination shall be binding on Senior Lender's determination thereof. For the avoidance of doubt, in the event that a Junior Loan is terminated pursuant to an Equity Collateral Enforcement Action, then to the extent that a Cash Sweep Period is in effect solely as a result of the occurrence of a Cash Sweep Event due to an Event of Default under such terminated Junior Loan, a Cash Sweep Event Cure shall be deemed to have occurred upon the termination of such Junior Loan. If Borrower is no longer required to maintain the Lockbox Account or the Cash Management Account, Senior Lender shall cooperate (at no out-of-pocket expense or cost to Senior Lender) with Junior Lender in transferring the Reserve Funds and establishing a lockbox account and/or cash management account and cash management system in accordance with the provisions of the Junior Loan Documents.

(f) Mezzanine Endorsement to Title Policy. Junior Lenders hereby acknowledge that their respective rights pursuant to the endorsements, loss payee letters and assignment of title insurance proceeds to each Junior Lender relating to Borrower's title insurance policies obtained in connection with the Junior Loans shall be in the following order of priority: (i) first, Mezzanine A Lender, (ii) second, Mezzanine B Lender, and (iii) third, Mezzanine C Lender.

(g) Intentionally Omitted.

(h) Requests for Disbursements. Senior Lender hereby agrees to (x) notify such Junior Lender of any requests by Borrower for disbursements of funds from the Reserve Funds (as defined in the Senior Loan Agreement) or a release of Net Proceeds (as defined in the Senior Loan Documents), and (y) promptly following written request from any Junior Lender, provide such Junior Lender with any documentation delivered by Borrower to Senior Lender with respect to any such request by Borrower for a disbursement of funds from the Reserve Funds or release of Net Proceeds (provided that in no event shall failure by Senior Lender to provide such notice or documentation to any Junior Lender constitute a default hereunder or impose any liability on Senior Lender).

(i) Loan Components. In furtherance of and not in limitation to the provisions of Section 15(j) below, each Junior Lender hereby acknowledges and agrees that notwithstanding anything to the contrary contained herein, at any time prior to the final Securitization of the Senior Loan, subject to the applicable terms and conditions of the Senior Loan Documents, Senior Lender may create components of the Senior Loan, change the balances, amortization and interest rate of the Senior Loan (and of any components thereof that may be created by Senior Lender), in each case without the consent of any Junior Lender, provided that the initial weighted average coupon, monthly amortization in the aggregate among the components of the Senior Loan and the aggregate principal balance of the Senior Loan shall remain the same and, except for any rate creep that may occur as a result of the application of payments among the components of the Senior Loan, there shall be no adverse economic or other material adverse effect on any Junior Loan, no material increase or decrease in any Junior Borrower's obligations under the related Junior Loan Documents and no material decrease in any Junior Lender's rights, remedies or protections thereunder, in each case, as a result of any such modifications of the Senior Loan. Senior Lender shall reimburse Junior Lenders for all reasonable out of pocket costs and expenses incurred by Junior Lenders in connection with the creation of any components (including, without any limitation, any such promissory notes) of the Senior Loan.

(j) Cooperation. At the request of Senior Lender, prior to the final Securitization of the Senior Loan, subject to the applicable terms and conditions of the Senior Loan Documents and the applicable Junior Loan Documents, each Junior Lender shall use reasonable efforts, at Senior Lender's sole cost and expense, to satisfy, and to cooperate with Senior Lender in attempting to cause Borrower and each Junior Borrower to satisfy, the market standards to which Senior Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with the Securitization of the Senior Loan, including, entering into (or consenting to, as applicable) any modifications to this Agreement or the Senior Loan Documents or Junior Loan Documents, and to cooperate with Senior Lender in attempting to cause Borrower and each Junior Borrower to execute such modifications to the Senior Loan Documents and Junior Loan Documents, in any such case, as may be reasonably requested by the Rating Agencies to effect the Securitization; provided, however, (A) no Junior Lender shall be required to modify or amend this Agreement or any Junior Loan Documents (or consent to such modification of the Senior Loan Documents or the Senior Junior Loan Documents), if such modification or amendment would (I) increase or decrease (to more than a *de minimis* extent) the applicable Junior Borrower's obligations under the related Junior Loan Documents, or (II) decrease (to more than a *de minimis* extent) such Junior Lender's rights, remedies or protections thereunder or under this Agreement or (III) have

any adverse economic effect or otherwise have any adverse effect on the related Junior Loan, (B) no Senior Loan Modification or Junior Loan Modification requiring the consent of any Junior Lender may be entered into without the prior written consent of each Junior Lender whose consent is required pursuant to Section 8(a) or Section 8(b) hereof, and (C) no modification or amendment to the Subordinate Junior Loan Documents pursuant to this Section 15(j) shall be effective without the consent of Senior Junior Lender, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with any Securitization, upon Senior Lender's written request and sole cost and expense, each Junior Lender agrees to provide for inclusion in any Disclosure Document relating to the related Securitization such non-confidential and non-proprietary information concerning such Junior Lender as Senior Lender reasonably determines to be necessary or appropriate. Subject to the qualifications in clauses (A) through (C) above, each Junior Lender agrees that if the Senior Loan is to be included as an asset of the Securitization, such Junior Lender shall at Senior Lender's request (and at Senior Lender's sole cost and expense), reasonably cooperate with the reasonable requests of each Rating Agency and Senior Lender in connection with the Securitization. Senior Lender shall reimburse each Junior Lender for all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees), incurred by such Junior Lender in considering, responding to, negotiating and/or implementing any cooperation, modifications or other actions requested by Senior Lender in connection with this Section 15(j). Notwithstanding the foregoing, the obligations and rights of Senior Lender set forth in this Section 15(j) are limited to the initial named Senior Lender hereunder and its Affiliates, and no successors or assigns of the initial named Senior Lender hereunder or its Affiliates shall have any obligations or rights under this Section 15(j). For the avoidance of doubt, the parties agree that any Borrower's or any Junior Borrower's obligation to enter into any amendment or modification to the Senior Loan Documents or any Junior Loan Documents (including any obligation to enter into amendments pursuant to Article IX of the Senior Loan Agreement or Article IX of any Junior Loan Agreement) shall be subject to the obtaining of any consent of a Junior Lender that is required hereunder, and no Borrower or Junior Borrower shall be in default of its obligations under any of the Senior Loan Documents or Junior Loan Documents to enter into any amendment or modification if the consent of a Junior Lender required hereunder is not obtained. Notwithstanding anything to the contrary contained in this Section 15(j) or otherwise, no Junior Lender shall be required to provide any information with respect to any direct or indirect investors in such Junior Lender or any Affiliates of such Junior Lender (or any direct or indirect investors in any such Affiliates), unless providing such information is required by applicable law in connection with the applicable Securitization.

(k) Intentionally Omitted.

(l) Intentionally Omitted.

(m) Additional Mezzanine Financing. Neither Senior Lender nor any Junior Lender shall exercise any right to create any "new mezzanine loan" (whether senior or junior to any then existing Junior Loan) under any provision of the Senior Loan Documents or Junior Loan Documents, as applicable, without the consent of Senior Lender and each Junior Lender.

Section 16. FINANCING OF JUNIOR LOANS.

(a) Notwithstanding any other provision hereof to the contrary, Senior Lender and each Junior Lender consents to each Junior Lender's sale in connection with a repurchase agreement facility or pledge (each, a "**Pledge**") of its respective Junior Loan (or any interest therein) and of the related Separate Collateral to any Person which (i) has extended a credit facility, including, without limitation, credit in the form of a repurchase agreement facility, to any Junior Lender, (ii) would otherwise satisfy the requirements of a Qualified Transferee or a financial institution whose long-term unsecured debt is rated at least "A" (or the equivalent) or better by each Rating Agency (other than Morningstar), and (iii) which is not Borrower, a Junior Borrower or a Broad Affiliate of Borrower or of a Junior Borrower (a "**Loan Pledgee**"), on the terms and conditions set forth in this Section 16. It is also agreed that the sale by a Junior Lender of its Junior Loan to a Qualified Transferee and the simultaneous agreement by such Junior Lender to repurchase such Junior Loan under an arrangement documented as a repurchase agreement shall qualify as a Pledge, provided that all applicable terms and conditions of this subsection (a) are complied with; further provided that a Loan Pledgee which is not a Qualified Transferee may not take title to Equity Collateral except in accordance with Section 6(a) hereof. Upon written notice by a Junior Lender to Senior Lender and each other Junior Lender that a Pledge has been effected and the address for notice purposes of the Loan Pledgee, Senior Lender and each applicable Junior Lender agrees to acknowledge receipt of such notice and thereafter agrees: (i) to give such Loan Pledgee written notice of any default by the Junior Lender which has made a Pledge to such Loan Pledgee under this Agreement of which default Senior Lender or such Junior Lender has actual knowledge; (ii) to allow Loan Pledgee a period of ten (10) days (in respect of a monetary default) and a period of thirty (30) days (in respect of a nonmonetary default) to cure a default by the applicable Junior Lender in respect of its obligations to Senior Lender or such Junior Lender hereunder, but such Loan Pledgee shall not be obligated to cure any such default; (iii) that no amendment or modification of this Agreement which adversely affects the rights or obligations of such Junior Lender, and no waiver or termination of this Agreement, shall be effective against such Loan Pledgee without the written consent of such Loan Pledgee, which consent shall not be unreasonably withheld (provided that the consent of such Loan Pledgee shall not be required unless such Junior Lender's consent was required pursuant to the terms of this Agreement to effect such modification, waiver or termination); (iv) that Senior Lender shall give to such Loan Pledgee copies of any Senior Loan Default Notice and each Junior Lender shall give to such Loan Pledgee copies of any Junior Loan Default Notice issued by such Junior Lender simultaneously with the giving of same to the applicable Junior Lender and accept any cure thereof by such Loan Pledgee made in accordance with the provisions of Section 12 of this Agreement as if such cure were made by the applicable Junior Lender; (v) that Senior Lender and each Junior Lender shall deliver to such Loan Pledgee such estoppel certificate(s) as such Loan Pledgee shall reasonably request, provided that any such estoppel certificate(s) shall be in the form contemplated by Section 18(b) or such other form reasonably acceptable to Senior Lender and such Junior Lender; and (vi) that, upon written notice (a "**Redirection Notice**") to Senior Lender or a Junior Lender by such Loan Pledgee that the applicable Junior Lender is in default beyond applicable cure periods under such Junior Lender's obligations to such Loan Pledgee pursuant to the applicable credit agreement between the applicable Junior Lender and such Loan Pledgee (which notice need not be joined in or confirmed by such Junior Lender), and until such Redirection Notice is withdrawn or rescinded by such Loan Pledgee, Senior Lender and each other Junior Lender shall remit to the applicable

Loan Pledgee and not to the applicable Junior Lender, any payments that Senior Lender or such other Junior Lender would otherwise be obligated to pay to such Junior Lender from time to time pursuant to this Agreement, any Senior Loan Document, any Junior Loan Document or any other agreement between Senior Lender or any Junior Lender that relates to the Senior Loan or a Junior Loan. Each Junior Lender hereby unconditionally and absolutely releases Senior Lender and each other Junior Lender from any liability to such Junior Lender on account of Senior Lender's or such other Junior Lender's, as applicable, compliance with any Redirection Notice reasonably believed (without any duty of inquiry of any kind) by Senior Lender or such other Junior Lender, as applicable, to have been delivered by such Junior Lender's Loan Pledgee. A Loan Pledgee shall be permitted to fully exercise its rights and remedies against the applicable Junior Lender, and realize on any and all collateral granted by the applicable Junior Lender to such Loan Pledgee (and accept an assignment in lieu of foreclosure as to such collateral), in accordance with applicable law. In such event, Senior Lender and each other Junior Lender shall recognize such Loan Pledgee (and any transferee which is also a Qualified Transferee at any foreclosure or similar sale held by such Loan Pledgee or any Transfer in lieu of such foreclosure), and its successors and assigns, as the successor to the applicable Junior Lender's rights, remedies and obligations under this Agreement and the Junior Loan Documents and any such Loan Pledgee or Qualified Transferee shall assume in writing (for the benefit of Senior Lender and each other Junior Lender and their respective successors and assigns) the obligations of the applicable Junior Lender hereunder accruing from and after such Transfer and agrees to be bound by the terms and provisions hereof (it being agreed that, notwithstanding anything to the contrary contained herein, such Loan Pledgee shall not be required to so assume such Junior Lender's obligations hereunder prior to such realization on such collateral). The rights of a Loan Pledgee under this Section 16 shall remain effective unless and until such Loan Pledgee shall have notified Senior Lender and Junior Lenders in writing that its interest in the applicable Junior Loan has terminated.

(b) Notwithstanding any provisions herein to the contrary, if a conduit ("**Conduit**") which is not a Qualified Transferee provides financing to a Junior Lender then such Conduit will be a permitted "Loan Pledgee" despite the fact it is not a Qualified Transferee if the following conditions are satisfied:

(i) The loan (the "**Conduit Inventory Loan**") made by the Conduit to such Junior Lender to finance the acquisition and holding of its interest in such Junior Lender's Junior Loan will require a third party (the "**Conduit Credit Enhancer**") to provide credit enhancement;

(ii) each of the Conduit Credit Enhancer and the administrative agent of the Conduit will be a Qualified Transferee;

(iii) the applicable Junior Lender will pledge (or sell, transfer or assign as part of a repurchase facility) its interest in the applicable Junior Loan to the Conduit as collateral for the Conduit Inventory Loan;

(iv) the Conduit Credit Enhancer and the Conduit will agree that, if such Junior Lender defaults under the Conduit Inventory Loan, or if the Conduit is unable to refinance its outstanding commercial paper even if there is no default by such Junior

Lender, the Conduit Credit Enhancer will purchase the Conduit Inventory Loan from the Conduit, and the Conduit will assign the pledge of such Junior Lender's interest in such Junior Loan to the Conduit Credit Enhancer; and

(v) unless the Conduit is in fact then a Qualified Transferee, the Conduit will not without obtaining a Rating Agency Confirmation from each Rating Agency have any greater right to acquire the interests in the Junior Loan pledged by such Junior Lender, by foreclosure or otherwise, than would any other purchaser that is not a Qualified Transferee at a foreclosure sale conducted by a Loan Pledgee.

Section 17. OBLIGATIONS HEREUNDER NOT AFFECTED.

(a) All rights, interests, agreements and obligations of Senior Lender and each Junior Lender under this Agreement shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Senior Loan Documents or any of the Junior Loan Documents or any other agreement or instrument relating thereto;

(ii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release, amendment or waiver of, or consent to, or departure from, any guaranty, for all or any portion of any of the Senior Loan or the Junior Loans;

(iii) any manner of application of collateral, or proceeds thereof, to all or any portion of the Senior Loan or any of the Junior Loans, or any manner of sale or other disposition of any collateral for all or any portion of the Senior Loan or any of the Junior Loans or any other assets of Borrower, Junior Borrowers or any other Broad Affiliates of Borrower or any Junior Borrower;

(iv) any change, restructuring or termination of the corporate structure or existence of Borrower, any Junior Borrower or any other Broad Affiliates of Borrower or any Junior Borrower; or

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, any Junior Borrower or a subordinated creditor or a senior lender subject to the terms hereof.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of the Senior Loan or a Junior Loan is rescinded or must otherwise be returned by Senior Lender or a Junior Lender upon the insolvency, bankruptcy or reorganization of Borrower or a Junior Borrower or otherwise, all as though such payment had not been made.

Section 18. MISCELLANEOUS.

(a) Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder (any of the foregoing, a "**Notice**") shall be in writing sent by facsimile (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable

overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify to each other party hereto in accordance with the provisions of this Section 18. Any such Notice shall be deemed to have been received: (a) upon receipt if mailed, (b) on the date of sending by facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To Senior Lender:

JPMorgan Chase Bank, National Association
383 Madison Avenue, 31st Floor
New York, New York 10179
Attention: Thomas Nicholas Cassino
Facsimile No.: (212) 834-6029

and:

JPMorgan Chase Bank, National Association
383 Madison Avenue
New York, New York 10179
Attention: Nancy Alto
Facsimile No.: (917) 546-2564

with a copy to:

Cadwalader, Wickersham & Taft, LLP
One World Financial Center
New York, New York 10281
Attention: Melissa C. Hinkle, Esq.
Facsimile No.: (212) 504-6666

To Mezzanine A Lender:

JPMorgan Chase Bank, National Association
383 Madison Avenue, 31st Floor
New York, New York 10179
Attention: Thomas Nicholas Cassino
Facsimile No.: (212) 834-6029

and:

JPMorgan Chase Bank, National Association
383 Madison Avenue
New York, New York 10179
Attention: Nancy Alto
Facsimile No.: (917) 546-2564

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(b) Estoppel. (i) Each Junior Lender shall, within ten (10) Business Days following a request from Senior Lender or the other Junior Lender, provide Senior Lender or such Junior Lender, as the case may be, with a written statement setting forth the then current outstanding principal balance of the Junior Loan held by such Junior Lender, the aggregate accrued and unpaid interest under the Junior Loan held by such Junior Lender, and stating whether to such Junior Lender's knowledge any default or Event of Default exists under the Junior Loan held by such Junior Lender or this Agreement.

(ii) Senior Lender shall, within ten (10) Business Days following a request from a Junior Lender, provide such Junior Lender with a written statement setting forth the then current outstanding principal balance of the Senior Loan, the aggregate accrued and unpaid interest under the Senior Loan, and stating whether to Senior Lender's knowledge any default or Event of Default exists under the Senior Loan or this Agreement.

(iii) Any statement provided pursuant to this Section 18(b) may be relied upon by, as applicable, any Loan Pledgee, any investor or participant in the Senior Loan or the applicable Junior Loan, or any purchaser of the Senior Loan or any Junior Loan (or of any interest or a participation interest therein), but may not be relied upon by any Borrower Party, any Junior Borrower or any guarantor or any indemnitor with respect to the Senior Loan or any Junior Loan.

(c) Further Assurances. So long as all or any portion of the Senior Loan or any Junior Loan remains unpaid and any Senior Loan Document encumbers the Premises or a Junior Loan Document encumbers any Equity Collateral, Senior Lender and each Junior Lender shall each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

(d) No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of this Agreement to inure to any Borrower Party, any Junior Borrower, or any other Person not a party to this Agreement other than Loan Pledgees. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party

against whom enforcement of any change is sought. If any Certificates are outstanding, this Agreement shall not be amended or otherwise modified in a manner materially adverse to Senior Lender unless a Rating Agency Confirmation has been obtained with respect to such amendment or other modification.

(e) Successors and Assigns. This Agreement shall bind all successors and permitted assigns of Senior Lender and each Junior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and each Junior Lender.

(f) Counterpart Originals. This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic image scan transmission (such as a “.pdf” file) will be effective as delivery of an original manually-executed counterpart of the Agreement.

(g) Legal Construction/Consent to Jurisdiction. In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York. Each party hereto irrevocably and unconditionally submits to the jurisdiction of the United States District Court for the Southern District of New York, any court in the State of New York located in the Borough of Manhattan in the City and County of New York, and any appellate court from any thereof, in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereunder, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereunder may be heard or determined in such New York State court or, to the extent permitted by law, in such federal court.

(h) No Waiver; Remedies. No failure on the part of Senior Lender or any Junior Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

(i) No Joint Venture. Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

(j) Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

(k) Conflicts. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan Documents or the Junior Loan Documents, the terms and conditions of this Agreement shall control.

(l) No Release. Nothing herein contained shall operate to (a) release any Borrower Party from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (ii) any liability of any Borrower Party under the Senior Loan Documents or (b) release any Junior Borrower from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the related Junior Loan Documents or (ii) any liability of a Junior Borrower under the related Junior Loan Documents.

(m) Continuing Agreement. This Agreement is a continuing agreement and shall remain in full force and effect until the earlier of (x) payment in full in cash of the Senior Loan and all of the Junior Loans or (y) transfer of title to Junior Lenders of their respective Equity Collateral in accordance with the terms and conditions of Section 6 (provided, however, that, except to the extent expressly stated herein to survive, this Agreement shall solely terminate with respect to any Junior Lender who acquires title (in its own name or the name of a designee) to its respective Equity Collateral and to Subordinate Junior Lender) or (z) subject to the rights granted to each Junior Lender under the last paragraph of each of Sections 14(b) and 14(d), the transfer of the Premises by foreclosure of the Senior Loan Documents or the exercise of power of sale contained therein by deed-in-lieu of foreclosure in each case in accordance with the provisions of Section 14 of this Agreement; provided, however, that (i) any rights or remedies of any party hereto arising out of any breach of any provision hereof occurring prior to the date of termination of this Agreement shall survive such termination and any provisions that by their terms are expressly intended to survive a termination and (ii) if at any time any payment in full of the Senior Loan or any Junior Loan is rescinded in whole or in part or must be otherwise restored or returned in whole or in part upon the insolvency, bankruptcy or reorganization of any Borrower Party or any Junior Borrower, as applicable, or otherwise, then, upon the restoration or return of any portion of such payment in full, Senior Lender's or the related Junior Lender's, as applicable, rights and obligations hereunder shall be reinstated as though such payment in full (or portion thereof so restored or returned, as the case may be) had not been made at such time. In the event the Senior Loan is repaid in full, (i) the Junior Lender with the highest priority Junior Loan shall have the right to exercise all of the rights granted to Senior Lender pursuant to this Agreement and shall thereafter be deemed to be the "Senior Lender" and to be the holder of the "Senior Loan" for all purposes without requiring the amendment of this Agreement, (ii) references hereafter to the Senior Loan Documents shall be deemed to be references to such Senior Junior Lender's Senior Junior Loan Documents and (iii) references to "Transfer of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure" (or words of similar import) shall be deemed to be references to transfer of such Senior Junior Lender's Equity Collateral pursuant to any Equity Collateral Enforcement Action. Notwithstanding the foregoing provisions of this Section 18(m), in the event the Senior Loan or any Junior Loan is repaid in full in cash or otherwise retired, cancelled or terminated, Senior Lender or the Junior Lender that was the holder of such repaid, retired, cancelled or terminated loan shall have no further rights or obligations under this Agreement, except those rights and obligations that expressly survive the expiration or termination of this Agreement. The provisions of this Section 18(m) shall survive the expiration and termination of this Agreement with respect to any party hereto.

(n) Severability. In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any

applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement. Furthermore, the parties shall in good faith endeavor to replace any provision held to be invalid or unenforceable with a valid and enforceable provision which most closely resembles, and which has the same economic effect as, the provision held to be invalid or unenforceable.

(o) Injunction. Each of Senior Lender and each Junior Lender acknowledges (and waives any defense based on a claim) that monetary damages are not an adequate remedy to redress a breach by any other party hereunder and that a breach by any of Senior Lender or any Junior Lender hereunder would cause irreparable harm to the other parties hereto. Accordingly, Senior Lender and Junior Lenders agree that upon a breach of this Agreement by any other party hereto, the remedies of injunction, declaratory judgment and specific performance shall be available to such non-breaching party.

(p) Reciprocal Disclaimer. (i) Senior Lender and Junior Lenders are each sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the applicable Junior Loans is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Junior Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Junior Lenders deem relevant. Each of Senior Lender and each of the Junior Lenders has not relied upon, in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Junior Loans and the Junior Loan Documents, any oral or written information, representation, warranty or covenant from any other party hereto, or from the representatives, employees, Affiliates or agents of any other party hereto, other than the representations and warranties, if any, of each other party hereto contained herein and therein. Each of Senior Lender and each of the Junior Lenders further acknowledges that no employee, agent or representative of any other party hereto has been authorized to make, and that each of Senior Lender and Junior Lenders have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of Senior Lender and each of the Junior Lenders acknowledges that no other party hereto has made any representations or warranties as to the Senior Loan or any of the Junior Loans other than those specifically contained in this Agreement or the Premises (including, without limitation, the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or any of the Junior Loans).

(ii) Each of Senior Lender and each of the Junior Lenders acknowledges that the Senior Loan, the Senior Loan Documents, each of the Junior Loans, and each of the Junior Loan Documents are distinct, separate transactions and loans, separate and apart from each other. Each of Senior Lender and each of the Junior Lenders acknowledges that each other party hereto is a distinct separate lender or investor with distinct and

separate loans with various rights and remedies with respect to the Premises and the applicable Separate Collateral which are not in all respects aligned.

(q) Consent and Approval Rights. Subject to Section 19 with respect to Affiliate Holders, with respect to any provisions hereof that require the consent or approval of all Junior Lenders to any action by Senior Lender, the withholding of consent or disapproval of any such action by any Junior Lender whose consent or approval is required shall preclude Senior Lender from taking the proposed action. Further, subject to Section 19 with respect to Affiliate Holders, with respect to any provisions hereof that requires the consent or approval of Senior Lender or the other Junior Lender to any action by a Junior Lender, the withholding of consent or disapproval of any such action by Senior Lender or another Junior Lender, as applicable, shall preclude such Junior Lender from taking the proposed action.

(r) TRIAL BY JURY. EACH PARTY HERETO AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND EACH WAIVES ANY RESPECTIVE RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HERewith. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY HERETO, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY HERETO IS HEREBY RESPECTIVELY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY EACH PARTY HERETO.

Section 19. AFFILIATE HOLDERS.

(a) Notwithstanding anything in this Agreement to the contrary, without limiting or obviating (or intending to limit or obviate) the restrictions on Transfer set forth in Section 5 or the conditions to consummating an Equity Collateral Enforcement Action set forth in Section 6(a), except as otherwise specifically provided in this Section 19, Senior Lender and each Junior Lender agree that:

(i) a Transfer of any interest in any Junior Loan to Borrower or Junior Borrower, or a Broad Affiliate of Borrower or any Junior Borrower shall be subject to the prior written approval of Senior Lender and, as applicable Senior Junior Lender, in its sole and absolute discretion;

(ii) except as otherwise provided in the clauses below in this Section 19, no Affiliate Holder shall be entitled to exercise (or to cause to be exercised, through the exercise of voting rights, contract rights (including, without limitation, pursuant to any Co-Lender Agreement or otherwise) any of the rights (including without limitation, consent, consultation and approval rights) available to any Junior Lender pursuant to this Agreement under: Section 5 (solely with respect to any right, if applicable under the terms and provisions of Section 5, of Senior Junior Lender to approve a Transfer made by

a Subordinate Junior Lender), Section 6, Section 8, Section 10 (provided that with respect to an Affiliate Holder that is a Broad Affiliate of a Pre-Approved JV Partner: (1) so long as there is no Event of Default under the Senior Loan or any Junior Loan, nothing herein shall be construed to limit such Affiliate Holder's right to retain the payments described in Sections 10(c)(i), 10(c)(ii) and 10(c)(iii) in accordance therewith (which shall include, without limitation, the application of funds in the Cash Management Account pursuant to the cash management provisions of the Cash Management Agreement); (2) that any sums that are allocable to an Affiliate Holder under the foregoing Sections 10(c)(i), 10(c)(ii) and 10(c)(iii) and withheld during the continuance of an Event of Default under the Senior Loan or any Junior Loan pursuant to the terms of Sections 10(c)(i), 10(c)(ii) and 10(c)(iii) shall be deposited by Senior Lender (or Senior Lender shall direct Agent to deposit such funds) into an Eligible Account established for the benefit of Affiliate Holder (the "**Affiliate Holder Payments Account**") and which sums shall be released to Affiliate Holder (or a Non-Affiliate Holder successor thereto, provided such Transfer is in compliance with Section 5 hereof) upon the earlier to occur of the date on which (x) the applicable Event of Default is cured (whether by Borrower, Junior Borrower, Senior Lender or any Junior Lender in accordance herewith) and (y) there is no longer an Affiliate Holder in the Junior Loan in question, whether by Transfer of all of such Affiliate Holder's interest in such Junior Loan to a Non-Affiliate Holder in accordance with Section 5 hereof, Transfer by such Affiliate Holder of its indirect interest in Borrower and/or Junior Borrower to any Person who is not a Broad Affiliate of Borrower and/or Junior Borrower which results in such Affiliate Holder no longer being a Broad Affiliate of Borrower or Junior Borrower, such Affiliate Holder becoming a Foreclosure Holder in accordance herewith, or otherwise; and (3) any and all payments that would be due and payable to an Affiliate Holder in connection with a repayment in full of all Loans or, in the case of the most Subordinate Junior Loan, the repayment in full of the Senior Loan and all Senior Junior Loans, are permitted to be paid to Affiliate Holder notwithstanding the foregoing restriction of rights that would otherwise be available under Section 10), Section 11(d) (as to the rights of Senior Lender and, as applicable, the Senior Junior Lender, with respect to actions by any Junior Lender), Section 12 (provided, however, that in the case of a monetary cure, an Affiliate Holder shall have the right to contribute to a monetary cure, so long as (1) the decision to make such cure is made exclusively by one or more Non-Affiliate Holders, (2) at least one Non-Affiliate Holder is contributing to such monetary cure, (3) such Affiliate Holder's contribution shall not exceed its pro rata share of applicable Junior Loan (plus the amount necessary (if any) to cover any shortfall in the contribution to such monetary cure by any other holders of interests in the Junior Loan) and (4) such funds contributed by such Affiliate Holder are not revenue derived from the Premises, insurance, condemnation proceeds, reserve/escrow amounts or the other collateral for the Senior Loan or any Junior Loan, except to the extent the same was distributed or dividended in compliance with the applicable terms and conditions of the Senior Loan Documents and the Junior Loan Documents)), Section 13, Section 14, Section 15, Section 16 (solely with respect to the right of a Senior Junior Lender to approve of a pledge by a Subordinate Junior Lender), Section 18(c), and Section 18(o) hereof;

(iii) no Affiliate Holder shall be permitted to take, nor shall such Affiliate Holder take any of the following actions (or cause, through the exercise of voting rights,

contract rights (including, without limitation, pursuant to any Co-Lender Agreement) or otherwise, any of the following actions to be taken by any other Person on behalf of such Affiliate Holder): (A) commence a Realization Event or an Equity Collateral Enforcement Action (the parties hereto agreeing that nothing in this Agreement shall limit or restrict an Affiliate Holder's right to benefit from or otherwise participate in an Equity Collateral Enforcement Action initiated by a Non-Affiliate Holder, provided that such Non-Affiliate Holder is not exercising such rights at the request or direction of any Affiliate Holder and so long as the determination to initiate such Equity Collateral Enforcement Action is made exclusively by one or more Non-Affiliate Holders), (B) collect any default interest, late payment charges or other fees and expenses in connection with the Junior Loan, provided that such default interest, late payments charges or other fees and expenses otherwise allocable and owing to and withheld from such Affiliate Holder shall be deposited into the Affiliate Holder Payments Account during the pendency of any Event of Default under the Senior Loan or any Junior Loan and shall be released to Affiliate Holder (or a Non-Affiliate Holder successor thereto, provided such Transfer is in compliance with Section 5 hereof) upon the earlier to occur of the date on which (x) the applicable Event of Default is cured (whether by Borrower, Junior Borrower, Senior Lender or any Junior Lender in accordance herewith) and (y) there is no longer an Affiliate Holder in the Junior Loan in question, whether by Transfer of all of such Affiliate Holder's interest in such Junior Loan to a Non-Affiliate Holder in accordance with Section 5 hereof, Transfer by such Affiliate Holder of its indirect interest in Borrower and/or Junior Borrower to any Person who is not a Broad Affiliate of Borrower and/or Junior Borrower which results in such Affiliate Holder no longer being a Broad Affiliate of Borrower or Junior Borrower, such Affiliate Holder becoming a Foreclosure Holder in accordance herewith, or otherwise, (C) gain access to any electronic platform for the distribution of materials or information between Senior Lender and any Junior Lender, provided that the servicer of the applicable Junior Loan may have such access notwithstanding that such Junior Loan may have an Affiliate Holder as long as such servicer is not an Affiliate Holder, (E) receive (and hereby waives any right which it would otherwise have to receive) any "asset status reports" or any correspondence or materials or notices from Senior Lender or any Junior Lender (or a servicer or any other agent of Senior Lender or any Junior Lender, as applicable) of, or to participate in, any discussions, meetings or conference calls (among Senior Lender and any respective co-lenders or participants with Senior Lender and any Junior Lender and any respective co-lenders or participants with any Junior Lender or otherwise) regarding or relating to any Junior Loan or the Senior Loan, other than in its capacity as Borrower or Junior Borrower to the extent discussions and negotiations are being conducted with Borrower or Junior Borrower (as distinct from internal discussions and negotiations among the various creditors), (F) make any Protective Advances pursuant to or in connection with the applicable Junior Loan Documents (provided, however, an Affiliate Holder shall have the right to contribute to a Protective Advance, so long as (1) the decision to make such Protective Advance is made exclusively by one or more Non-Affiliate Holders, (2) at least one Non-Affiliate Holder is contributing to such Protective Advance, (3) such Affiliate Holder's contribution shall not exceed its pro rata share of applicable Junior Loan (plus the amount necessary (if any) to cover any shortfall in the contribution to such Protective Advance by any other holders of interests in the Junior

Loan) and (4) such funds contributed by such Affiliate Holder are not revenue derived from the Premises, insurance, condemnation proceeds, reserve/escrow amounts or the other collateral for the Senior Loan or any Junior Loan, except to the extent the same was distributed or dividended in compliance with the applicable terms and conditions of the Senior Loan Documents and the Junior Loan Documents), (G) accept, in violation of the express provisions of this Agreement, sue for, ask or demand from Borrower or any Junior Borrower any payment on account of the applicable Junior Loan held in whole or in part by such Affiliate Holder, (H) initiate any claim, in its capacity as a holder of any direct or indirect interest in the applicable Junior Loan, against Senior Lender or any Junior Lender or any agent of any of the foregoing with respect to the duties and obligations of such Person under the Senior Loan Documents, the Junior Loan Documents, this Agreement or any applicable Co-Lender Agreement, or (I) commence, prosecute or participate in any suit, action, case or proceeding against Borrower or any Junior Borrower in violation of the express provisions of this Agreement or violate any of the other express terms or provisions of this Agreement or any Co-Lender Agreement applicable to any direct or indirect interest held by such Affiliate Holder in the applicable Junior Loan (and, in the event of any such violation, the applicable Junior Lender may intervene and interpose such defense or plea as it shall elect, including that of a bad-faith filing by such Affiliate Holder, and shall, in any event, be entitled to restrain such actions in the same suit, action, case or proceeding or in any independent suit, action, case or proceeding) (the foregoing rights and remedies described in clauses (ii) and (iii) above being hereinafter collectively referred to as the “**Restricted Rights**”);

(iv) any Non-Affiliate Holder or Non-Affiliate Holders shall be entitled to exercise each of the Restricted Rights with respect to its related Junior Loan on behalf of the Non-Affiliate Holder and Affiliate Holder of such Junior Loan, provided, that (A) the applicable Co-Lender Agreement specifically prohibits the related Affiliate Holders from voting on or otherwise exercising any of the Restricted Rights (each, an “**Affiliate Participation Action**”) (the parties to such Co-Lender Agreement agreeing not to amend or modify such Co-Lender Agreement in contravention of the terms contained in this Section 19 without (1) the approval of Senior Lender and the other Junior Lenders (or by the Directing Mezzanine Lender if any portion of such Junior Loan is held by an Affiliate Holder) in their sole discretion and (2) if any Certificates are outstanding and rated by at least one Rating Agency, a Rating Agency Confirmation is obtained relating to such amendment or modification), it being understood that the Affiliate Holder’s paying or reimbursing any Non-Affiliate Holder its allocable share of any costs and expenses incurred or to be incurred by virtue of any such Non-Affiliate Holder’s exercise of such rights shall not, in and of themselves, be deemed to be an Affiliate Participation Action, (B) prior to the exercise of any such Restricted Right, a copy (certified as true, correct and complete by the applicable Non-Affiliate Holder) of such Co-Lender Agreement is or has been delivered to Senior Lender and the other Junior Lenders, and (C) the applicable Non-Affiliate Holder certifies to Senior Lender and the other Junior Lenders and any servicer or trustee of the Senior Loan and the other Junior Loans that (i) such Non-Affiliate Holder is a Non-Affiliate Holder, (ii) such Non-Affiliate Holder is not exercising such rights at the request or direction of any Affiliate Holder, and (iii) such Non-Affiliate Holder did not consider the interests of any Borrower Party, Junior

Borrower or any direct or indirect equity owner in Borrower, Junior Borrower, or any Borrower Party (in such capacity) in connection with such exercise;

(v) an Affiliate Holder shall not have the benefit of any consent rights and neither Senior Lender nor any Junior Lender shall be required to obtain any consent from such Affiliate Holder for any action that would otherwise require consent under this Agreement (and Senior Lender and each Junior Lender shall not enter into any agreement which grants any such consent rights to an Affiliate Holder of a Junior Loan); in each case, without Senior Lender's prior written consent, which may be withheld in its sole discretion; and

(vi) an Affiliate Holder shall not be entitled to (and hereby waives any right which it would otherwise have to require) promptness, diligence, notice of acceptance or any other notice with respect to the Senior Loan or any Junior Loan other than any notices that are required to be given pursuant to the terms of this Agreement (and hereby acknowledges that each Junior Lender shall have no obligation (subject to acceptable servicing standards) to protect, secure, perfect or insure any security interest or lien on any property solely for the benefit of such Affiliate Holder if it would not reasonably do so for its own account, or exhaust any right or take any action against Borrower, a Junior Borrower, any Guarantor under the applicable Junior Loan, or any other Person or property solely for the benefit of such Affiliate Holder).

(b) Notwithstanding anything contained in this Agreement to the contrary, with respect to any Affiliate Loan, Senior Lender and each Junior Lender agree that an Affiliate Holder that is the sole holder of a Junior Loan may initiate any Equity Collateral Enforcement Action and initiate the exercise of its rights pursuant to and in accordance with the applicable provisions of Section 6 this Agreement to foreclose or commence a foreclosure action or otherwise realize upon any of its Equity Collateral (or accept title to such Equity Collateral or real or personal property in lieu of foreclosure); provided, however, (x) no Event of Default is occurring under the Senior Loan or any Senior Junior Loan, (y) no Proceeding of Borrower is occurring, and (z) that no foreclosure action or other actions by such Affiliate Holder to realize upon any Equity Collateral or like action (including a consolidated foreclosure as permitted under the following sentence) shall exceed ninety (90) days in the aggregate from commencement to ultimate conclusion. For the avoidance of doubt, nothing in this Agreement shall limit or restrict an Affiliate Holder's right to benefit from or otherwise participate in any Equity Collateral Enforcement Action initiated by any Non-Affiliate Holder so long as the determination to initiate such Equity Collateral Enforcement Action is made by one or more Non-Affiliate Holders and not at the request or direction of any Affiliate Holder.

(c) Notwithstanding anything herein contained to the contrary, Senior Lender and each Junior Lender agree that an Affiliate Holder may participate in the exercise of rights initiated by any applicable Non-Affiliate Holder, provided that such Non-Affiliate Holder is not exercising such rights at the request or direction of any Affiliate Holder, pursuant to Section 14 hereof so long as such Affiliate Holder also pays as part of the Loan Purchase Price (or portion thereof allocable to such Affiliate Holder), as applicable, its pro rata share (based on its percentage ownership of the applicable Junior Loan) of all amounts that would be due and owing by Borrower upon repayment of the Senior Loan (and to the extent that Borrower is obligated to

pay the same under the Senior Loan Agreement), including any liquidated damage amount, any exit fees, any prepayment premiums or fees, any spread maintenance or yield maintenance charges, any late fees or charges, any special servicing, workout or liquidation fees of any nature and any unpaid default interest incurred or accrued with respect to the Senior Loan.

(d) Notwithstanding anything herein contained to the contrary, Senior Lender and each Junior Lender agree that any Affiliate Holder acquiring any rights or interests in the applicable Junior Loan after the Closing Date shall be subject to the provisions of this Agreement, including, without limitation, the requirements of this Section 19.

(e) At the time that any Junior Lender becomes an Affiliate Holder, then such Junior Lender shall enter into an agreement with the respective Affiliate Holder providing that all of the terms and provisions of this Section 19 and in Section 11(d) hereof shall be binding upon such Affiliate Holder and shall inure to the benefit of any of Senior Lender or any Junior Lender which is not a party to such agreement as a third party beneficiary of such agreement.

(f) Notwithstanding anything herein contained to the contrary, Senior Lender and each Junior Lender agree that: (i) no Affiliate Holder acquiring any rights or interests in the Certificates shall have any right to, nor shall such Person exercise any control, decision-making power, voting rights, notice and cure rights under or in respect of the Senior Loan, or other rights that would otherwise benefit a holder of any Certificates by virtue of its ownership or control of any interest in such Certificates, including, without limitation (A) any right to cause Senior Lender to initiate any Enforcement Actions or make Protective Advances, (B) any approval or consent rights of Senior Lender under this Agreement, (C) any right to make or bring any claim, in its capacity as a holder of any direct or indirect interest in the Senior Loan, against any Junior Lender or any agent thereof or the Senior Lender or any agent thereof with respect to the duties and obligations of such Junior Lender or agent thereof under the Junior Loan Documents or of Senior Lender or agent thereof under the Senior Loan Documents or this Agreement, and (D) any right of access to any electronic platform for the distribution of materials or information among the parties to this Agreement, "asset status reports" or any correspondence or materials or notices of or participation in any discussions, meetings or conference calls (among the parties to this Agreement, any of their respective co-lenders or participants, or otherwise) regarding or relating to the Senior Loan or any Junior Loan, other than in its capacity as Borrower to the extent discussions and negotiations are being conducted with Borrower (as distinct from internal discussions and negotiations among the various creditors) but expressly excluding the right to receive payments made in respect of such Person's interest in the Certificates; and (ii) to the extent that any of the foregoing rights set forth in the preceding clause (i) of this Section 19(f) (expressly excluding the right to receive payments made in respect of such Certificates) shall be available to holders of Certificates under the pooling and servicing agreement or trust and servicing agreement, as applicable, for a Securitization of all or any portion of the Senior Loan, then such pooling and servicing agreement or trust and servicing agreement, as applicable, shall provide that no such holders that are Affiliate Holders shall be entitled to exercise, directly or indirectly, any such rights.

(g) Notwithstanding the foregoing, any Certificates issued in connection with a Securitization, in addition to other means of compliance, shall be deemed to have complied with the obligations of Section 19 above, so long as the pooling and servicing agreement, trust

and servicing agreement or a similar agreement includes provisions designed to reasonably accomplish the requirements of Section 19 above, provided that (while not the exclusive means for satisfaction) the following shall be deemed to satisfy the requirements of Section 19 above if: (i) the definition of “Certificateholder” or similar term shall provide that solely for the purposes of the taking of any action or the giving of any consent, waiver, request or demand pursuant to such agreement, any Certificate legally or beneficially owned by any Broad Affiliate of any Borrower Party or any Junior Borrower shall be deemed not to be outstanding and the voting rights to which it is entitled shall not be taken into account in determining whether the requisite percentage of voting rights necessary to take any such action or effect any such consent, waiver, request or demand has been obtained (provided, that Senior Lender may obtain and conclusively rely upon an Officer’s Certificate of a Borrower Party to determine whether a Certificate is legally or beneficially owned by a Broad Affiliate of any Borrower Party or any Junior Borrower), (ii) any such Broad Affiliate of any Borrower Party or any Junior Borrower shall only be entitled to limited information regarding the Senior Loan collections and similar information and information regarding the Certificates, but in no event shall they be entitled to receive any asset status reports or similar reports or information relating to servicing strategy, workout status or other borrower related sensitive information, and (iii) such pooling and servicing agreement, trust and servicing agreement or similar agreement, as applicable, shall provide that no Broad Affiliate of Borrower or any Junior Borrower can be appointed as a special servicer for the Senior Loan.

Section 20. CO-LENDER AGREEMENTS.

The respective rights and obligations of the holders of the Senior Note relating to actions or inactions arising under this Agreement (including the rights of the holders of the Senior Note to direct the actions to be taken by Senior Lender under this Agreement, including, without limitation, any rights of consent in favor of Senior Lender hereunder) shall be governed by the provisions of any co-lender agreement to which each such holder is a party. The rights and obligations of the holders of each Junior Note relating to actions or inactions arising under this Agreement (including the rights of the holders of the applicable Junior Note to direct the actions of the applicable Junior Lender under this Agreement, including, without limitation, any rights of cure, rights of purchase and rights of consent in favor of any Junior Lender hereunder), shall be governed by the provisions of any co-lender agreement to which each such note holder is a party. The provisions of this Section 20 shall not imply or be deemed to imply that Senior Lender or any Junior Lender has read, reviewed or approved any co-lender agreement (other than any co-lender agreement to which Senior Lender or any Junior Lender is a party, in each case).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

SENIOR LENDER:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: 
Name: Anthony Shaskus
Title: Vice President

MEZZANINE A LENDER:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: 
Name: Anthony Shaskus
Title: Vice President

MEZZANINE B LENDER:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: 
Name: Anthony Shaskus
Title: Vice President

MEZZANINE C LENDER:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: 
Name: Anthony Shaskus
Title: Vice President

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

SENIOR LENDER:

NATIXIS REAL ESTATE CAPITAL LLC

By: 

Name: Michael Wagner
Title: Managing Director

By: 

Name: Roni Kotel
Title: Vice President

MEZZANINE A LENDER:

NATIXIS REAL ESTATE CAPITAL LLC

By: 

Name: Michael Wagner
Title: Managing Director

By: 

Name: Roni Kotel
Title: Vice President

MEZZANINE B LENDER:

NATIXIS REAL ESTATE CAPITAL LLC

By: 

Name: Michael Wagner
Title: Managing Director

By: 

Name: Roni Kotel
Title: Vice President

MEZZANINE C LENDER:

NATIXIS REAL ESTATE CAPITAL LLC

By: 

Name: Michael Wagner
Title: Managing Director

By: 

Name: Roni Kotel
Title: Vice President

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

SENIOR LENDER:

DEUTSCHE BANK AG, NEW YORK
BRANCH

By: 
Name: **STEVEN PACK**
Title: **DIRECTOR**

By: 
Name: **STEPHEN H CHOE**
Title: **MANAGING DIRECTOR**

MEZZANINE A LENDER:

DEUTSCHE BANK AG, NEW YORK
BRANCH

By: 
Name: **STEVEN PACK**
Title: **DIRECTOR**

By: 
Name: **STEPHEN H CHOE**
Title: **MANAGING DIRECTOR**

MEZZANINE B LENDER:

DEUTSCHE BANK AG, NEW YORK
BRANCH

By: 
Name: **STEVEN PACK**
Title: **DIRECTOR**

By: 
Name: **STEPHEN W CHOE**
Title: **MANAGING DIRECTOR**

Strictly Confidential

MEZZANINE C LENDER:

DEUTSCHE BANK AG, NEW YORK
BRANCH

By: 

Name:

STEVEN PACK

Title:

DIRECTOR

By: 

Name:

STEPHEN H. CHOE

Title:

MANAGING DIRECTOR

Strictly Confidential

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

SENIOR LENDER:

SOCIÉTÉ GÉNÉRALE

By: 
Name: _____
Title: **Kevin Kelley**
Director

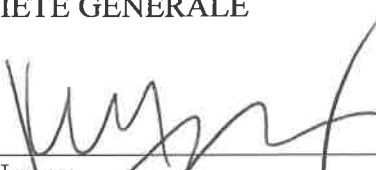
MEZZANINE A LENDER:

SOCIÉTÉ GÉNÉRALE

By: 
Name: _____
Title: **Kevin Kelley**
Director

MEZZANINE B LENDER:

SOCIÉTÉ GÉNÉRALE

By: 
Name: _____
Title: **Kevin Kelley**
Director

MEZZANINE C LENDER:

SOCIÉTÉ GÉNÉRALE

By: 

Name:

Title:

Kevin Kelley
Director

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

SENIOR LENDER:

BARCLAYS BANK PLC

By: 
Name: Michael Birajiclian
Title: Authorized Signatory

MEZZANINE A LENDER:

BARCLAYS BANK PLC

By: 
Name: Michael Birajiclian
Title: Authorized Signatory

MEZZANINE B LENDER:

BARCLAYS BANK PLC

By: 
Name: Michael Birajiclian
Title: Authorized Signatory

MEZZANINE C LENDER:

BARCLAYS BANK PLC

By: 
Name: **Michael Birajiclian**
Title: **Authorized Signatory**

EXHIBIT A

SENIOR LOAN DOCUMENTS

(All documents dated as of May 5, 2017, unless otherwise indicated.)

1. Loan Agreement by and between Borrower and Senior Lender
2. Consolidated, Amended and Restated Promissory Note made by Borrower and Senior Lender
3. Note Splitter Agreement
4. Promissory Note A-1-A made by Borrower in favor of JPMorgan
5. Promissory Note A-1-B made by Borrower in favor of Natixis
6. Promissory Note A-1-C made by Borrower in favor of DB
7. Promissory Note A-1-D made by Borrower in favor of SG
8. Promissory Note A-1-E made by Borrower in favor of Barclays
9. Promissory Note A-2-A-1 made by Borrower in favor of JPMorgan
10. Promissory Note A-2-A-2 made by Borrower in favor of JPMorgan
11. Promissory Note A-2-A-3 made by Borrower in favor of JPMorgan
12. Promissory Note A-2-A-4 made by Borrower in favor of JPMorgan
13. Promissory Note A-2-B-1 made by Borrower in favor of Natixis
14. Promissory Note A-2-B-2 made by Borrower in favor of Natixis
15. Promissory Note A-2-B-3 made by Borrower in favor of Natixis
16. Promissory Note A-2-C-1 made by Borrower in favor of DB
17. Promissory Note A-2-C-2 made by Borrower in favor of DB
18. Promissory Note A-2-D-1 made by Borrower in favor of SG
19. Promissory Note A-2-D-2 made by Borrower in favor of SG
20. Promissory Note A-2-D-3 made by Borrower in favor of SG
21. Promissory Note A-2-E-1 made by Borrower in favor of Barclays

22. Promissory Note A-2-E-2 made by Borrower in favor of Barclays
23. Promissory Note B-1 made by Borrower in favor of JPMorgan
24. Promissory Note B-2 made by Borrower in favor of Natixis
25. Promissory Note B-3 made by Borrower in favor of DB
26. Promissory Note B-4 made by Borrower in favor of SG
27. Promissory Note B-5 made by Borrower in favor of Barclays
28. Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by Borrower to Senior Lender
29. Gap Mortgage made by Borrower in favor of Senior Lender
30. Gap Note made by Borrower in favor of Senior Lender
31. Environmental Indemnity by Borrower and Guarantor in favor of Senior Lender
32. Guaranty Agreement by Guarantor in favor of Senior Lender
33. Assignment of Management Agreement and Subordination of Management Fees among Borrower, Senior Lender and Brookfield Properties Management LLC (“**Manager**”)
34. Deposit Account Control Agreement by and between Borrower, Senior Lender and Wells Fargo Bank, National Association
35. Cash Management Agreement among Borrower, Senior Lender, Wells Fargo Bank, N.A. and Manager
36. Section 255 Affidavit – Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement
37. Statement of Mortgagor or Assignee (Section 275 of the Real Property Law)
38. Post-Closing Letter
39. UCC-1 Financing Statements naming Borrower as debtor and Senior Lender as secured party

EXHIBIT B

MEZZANINE A LOAN DOCUMENTS

(All documents dated as of May 5, 2017, unless otherwise indicated.)

1. Mezzanine A Loan Agreement by and between Mezzanine A Borrower and Mezzanine A Lender
2. Mezzanine A Promissory Note A-1 by Mezzanine A Borrower in favor of JPMorgan
3. Mezzanine A Promissory Note A-2 by Mezzanine A Borrower in favor of Natixis
4. Mezzanine A Promissory Note A-3 by Mezzanine A Borrower in favor of DB
5. Mezzanine A Promissory Note A-4 by Mezzanine A Borrower in favor of SG
6. Mezzanine A Promissory Note A-5 by Mezzanine A Borrower in favor of Barclays
7. Mezzanine A Pledge and Security Agreement by Mezzanine A Borrower in favor of Mezzanine A Lender
8. Mezzanine A Environmental Indemnity by Mezzanine A Borrower and Guarantor in favor of Mezzanine A Lender
9. Mezzanine A Guaranty Agreement by Guarantor in favor of Mezzanine A Lender
10. Mezzanine A Subordination of Management Agreement and Subordination of Management Fees between Mezzanine A Borrower, Borrower, Mezzanine A Lender and Manager
11. Acknowledgment of Pledge executed by Mortgage Borrower
12. Certificate for Limited Liability Company Interests in Mortgage Borrower together with an undated limited liability company interest power duly executed in blank
13. Post-Closing Letter
14. UCC-1 Financing Statement naming Mezzanine A Borrower as debtor and Mezzanine A Lender as secured party

EXHIBIT C

MEZZANINE B LOAN DOCUMENTS

(All documents dated as of May 5, 2017, unless otherwise indicated.)

1. Mezzanine B Loan Agreement by and between Mezzanine B Borrower and Mezzanine B Lender
2. Mezzanine B Promissory Note A-1 by Mezzanine B Borrower in favor of JPMorgan
3. Mezzanine B Promissory Note A-2 by Mezzanine B Borrower in favor of Natixis
4. Mezzanine B Promissory Note A-3 by Mezzanine B Borrower in favor of DB
5. Mezzanine B Promissory Note A-4 by Mezzanine B Borrower in favor of SG
6. Mezzanine B Promissory Note A-5 by Mezzanine B Borrower in favor of Barclays
7. Mezzanine B Pledge and Security Agreement by Mezzanine B Borrower in favor of Mezzanine B Lender
8. Mezzanine B Environmental Indemnity by Mezzanine B Borrower and Guarantor in favor of Mezzanine B Lender
9. Mezzanine B Guaranty Agreement by Guarantor in favor of Mezzanine B Lender
10. Mezzanine B Subordination of Management Agreement and Subordination of Management Fees between Mezzanine B Borrower, Borrower, Mezzanine B Lender and Manager
11. Acknowledgment of Pledge executed by Mezzanine A Borrower
12. Certificate for Limited Liability Company Interests in Mezzanine A Borrower together with an undated limited liability company interest power duly executed in blank
13. Post-Closing Letter
14. UCC-1 Financing Statement naming Mezzanine B Borrower as debtor and Mezzanine B Lender as secured party

EXHIBIT D

MEZZANINE C LOAN DOCUMENTS

(All documents dated as of May 5, 2017, unless otherwise indicated.)

1. Mezzanine C Loan Agreement by and between Mezzanine C Borrower and Mezzanine C Lender
2. Mezzanine C Promissory Note A-1 by Mezzanine C Borrower in favor of JPMorgan
3. Mezzanine C Promissory Note A-2 by Mezzanine C Borrower in favor of Natixis
4. Mezzanine C Promissory Note A-3 by Mezzanine C Borrower in favor of DB
5. Mezzanine C Promissory Note A-4 by Mezzanine C Borrower in favor of SG
6. Mezzanine C Promissory Note A-5 by Mezzanine C Borrower in favor of Barclays
7. Mezzanine C Pledge and Security Agreement by Mezzanine C Borrower in favor of Mezzanine C Lender
8. Mezzanine C Environmental Indemnity by Mezzanine C Borrower and Guarantor in favor of Mezzanine C Lender
9. Mezzanine C Guaranty Agreement by Guarantor in favor of Mezzanine C Lender
10. Mezzanine C Subordination of Management Agreement and Subordination of Management Fees between Mezzanine C Borrower, Borrower, Mezzanine C Lender and Manager
11. Acknowledgment of Pledge executed by Mezzanine B Borrower
12. Certificate for Limited Liability Company Interests in Mezzanine B Borrower together with an undated limited liability company interest power duly executed in blank
13. Post-Closing Letter
14. UCC-1 Financing Statement naming Mezzanine C Borrower as debtor and Mezzanine C Lender as secured party

EXHIBIT E

PERMITTED FUND MANAGERS

1. Angelo Gordon
2. Annaly Capital Management
3. Apollo Global Management
4. ARES Management, L.P.
5. Athene Asset Management, L.P.
6. Axonic Capital LLC
7. BlackRock, Inc.
8. Brookfield Asset Management Inc.
9. CarVal Investors LLC
10. Clarion Partners
11. Colony Northstar, Inc.
12. Fortress Investment Group LLC
13. Garrison Investment Group
14. Goldman, Sachs & Co.
15. H/2 Capital Partners
16. iStar Financial Inc.
17. JPMorgan Asset Management
18. KKR Real Estate Finance Holdings L.P. / Kohlberg Kravis Roberts & Co. L.P.
19. LoanCore Capital LLC
20. Lone Star Funds
21. Loomis Sayles & Company LP
22. Mack Real Estate Credit Strategies LP
23. Metropolitan Life Insurance Company / MetLife Real Estate Investments

24. Oaktree Capital Group LLC
25. Och – Ziff Capital Management Group LLC
26. One William Street Capital Management, L.P.
27. Oxford Properties Group
28. Praedium Group
29. Principal Life Insurance Company
30. Prudential Real Estate Investors / Prudential Investment Management
31. Rialto Capital Management
32. Rockpoint Group
33. Rockwood Capital
34. Shelter Growth Capital Partners LLC
35. Square Mile Capital Management LLC
36. Starwood Capital Group/Starwood Property Trust
37. The Blackstone Group LP
38. Torchlight Investors
39. Voya Financial Inc
40. Walton Street Capital, LLC
41. Waterfall Asset Management LLC
42. Westbrook Partners
43. Western Asset Management Company
44. WestRiver Capital

EXHIBIT 2

NOTICE TO MEZZANINE LENDERS

November 12, 2021

BY FEDERAL EXPRESS

To Each of the Parties Addressed on Schedule A attached hereto.

Re: 245 Park Avenue

Ladies and Gentlemen:

Wilmington Trust, National Association as Trustee for the benefit of Holders of 245 Park Avenue Trust 2017-245P, Commercial Mortgage Pass-Through Certificates, Series 2017-245P, for itself and with respect to the related Companion Loans (“**Senior Lender**”) is successor-in-interest to JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NATIXIS REAL ESTATE CAPITAL LLC, SOCIÉTÉ GÉNÉRALE, DEUTSCHE BANK AG, NEW YORK BRANCH, and BARCLAYS BANK PLC; JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NATIXIS REAL ESTATE CAPITAL LLC, SOCIÉTÉ GÉNÉRALE, DEUTSCHE BANK AG, NEW YORK BRANCH, and BARCLAYS BANK PLC, collectively as Mezzanine A Lender; JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NATIXIS REAL ESTATE CAPITAL LLC, SOCIÉTÉ GÉNÉRALE, DEUTSCHE BANK AG, NEW YORK BRANCH, and BARCLAYS BANK PLC, collectively as Mezzanine B Lender; and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NATIXIS REAL ESTATE CAPITAL LLC, SOCIÉTÉ GÉNÉRALE, DEUTSCHE BANK AG, NEW YORK BRANCH, and BARCLAYS BANK PLC with respect to that certain commercial mortgage loan (the “**Senior Loan**”) made to Borrower in the original principal amount of \$1,200,000,000.00 and secured by (among other things) the Premises.

Reference is made to that certain Intercreditor Agreement, dated as of May 5, 2017 (the “**Intercreditor Agreement**”) entered into in connection with the Senior Loan. Capitalized terms used but not defined in this letter have the meanings set forth in the Intercreditor Agreement. Situs Holdings, LLC is special servicer and authorized agent for Senior Lender. This Notice is being sent to you, pursuant to the Intercreditor Agreement, in your capacity as a Junior Lender.

Borrower filed a Proceeding on October 31, 2021, resulting in an Event of Default under the Senior Loan Agreement. This Notice serves as the Senior Loan Default Notice pursuant to Section 12(a) of the Intercreditor Agreement and constitutes notice to you with respect to the Event of Default under the Senior Loan Agreement for all purposes under the Intercreditor Agreement.

245 Park Avenue, New York, New York
November 12, 2021
Page 2

Additionally, as a result of the Event of Default under the Senior Loan Agreement and the Senior Loan becoming a “specially serviced mortgage loan” a Purchase Option Event has occurred. This Notice serves as a Purchase Option Notice under Section 14(a) of the Intercreditor Agreement.

Finally, in accordance with Section 18(a) of the Intercreditor Agreement, from and after the date of this Notice, Senior Lender’s addresses for a Notice are amended and restated in their entirety as follows:

To Senior Lender: Robert E. Records
Director – Special Servicing
Special Servicing, SitusAMC
Embarcadero Center, 8th Floor
San Francisco, CA 94111
(817) 805-0412
RobertRecords@SitusAMC.com

With a copy to: David D. Ferguson
Polsinelli
900 W. 48th Place, Suite 900
Kansas City, MO 64112
DFerguson@Polsinelli.com

John T. Duncan III
Polsinelli
2950 Hardwood St., Suite 2100
Dallas, TX 75201
JDuncan@Polsinelli.com

Any partial payment or partial performance made by Borrower or any Junior Lender, or acceptance of any partial payment or partial performance by Senior Lender or any of its representatives, of any amount or performance that is not sufficient to cure as required herein or that is not sufficient to satisfy any future obligation under the Senior Loan Documents is not intended, and shall not be deemed, to constitute a waiver of Senior Lender’s rights, remedies or recourse under the Senior Loan Documents or at law or in equity. Any application of any such partial payment, or any acceptance of any such partial performance, is not intended, and shall not be deemed, to be a modification, rearrangement, reinstatement or extension of the Senior Loan Documents. Any such payment shall be applied in such order as Senior Lender may elect in its sole discretion, without any waiver by Senior Lender of its right to pursue any of its rights and remedies under the Senior Loan Documents or at law or in equity.

245 Park Avenue, New York, New York
November 12, 2021
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Senior Lender has not been notified of any Loan Pledgees and, accordingly, no notices are being issued to Loan Pledgees. If a Pledge has been effected and Loan Pledgees exist, please notify the Senior Lender of same pursuant to the terms of the Intercreditor Agreement.


Nothing set forth herein is intended, and shall not be deemed, to modify, limit, release, reduce or waive any of Senior Lender's rights, remedies, or privileges under the Senior Loan Documents, the Intercreditor Agreement or at law or in equity, all of which are hereby specifically reserved. Furthermore, the enumeration of any specific default in this Notice is not intended, and shall not be deemed, to waive other defaults that may currently exist under the Senior Loan Documents.

Sincerely,

LENDER:

**Wilmington Trust, National Association as Trustee
for the benefit of Holders of 245 Park Avenue Trust
2017-245P, Commercial Mortgage Pass-Through
Certificates, Series 2017-245P, for itself and with
respect to the related Companion Loans**

By: **Situs Holdings, LLC, acting in its capacity
as Special Servicer to Lender**

By: 
Robert E. Records
Director – Special Servicing
Special Servicing, SitusAMC
(817) 805-0412
RobertRecords@SitusAMC.com

cc:
johnbenson@eversheds-sutherland.com
jjablonski@ApolloLP.com
kmmkim@meritz.co.kr
Chris.Miculis@Nuveen.com
talia.feuerstein@nuveen.com;
Joseph.Yim@CommercialLoanServices.com
andrew.falk@slgreen.com
Harrison.Sitomer@slgreen.com

245 Park Avenue, New York, New York
November 12, 2021
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Schedule A

c/o Athene Asset Management LLC 2121 Rosecrans Avenue, Suite 5300 El Segundo, CA 90245 Attention: Dan Brown Re: 245 Park Avenue	c/o Athene Asset Management LLC 2121 Rosecrans Avenue, Suite 5300 El Segundo, CA 90245 Attention: Angelo Lombardo, Esq. Re: 245 Park Avenue
Dentons US LLP 1221 Avenue of the Americas New York, NY 10020 Attention: David Hall Email: David.hall@dentons.com 212-768-6806 - facsimile 212-768-6800 - telephone Re: 245 Park Avenue	c/o Apollo Insurance Solutions Group 2121 Rosecrans Avenue, Suite 5300 El Segundo, CA 90245 Attention: Daniel Brown With a copy by email to: dbrown@apollo.com
c/o Apollo Insurance Solutions Group 2121 Rosecrans Avenue, Suite 5300 El Segundo, CA 90245 Attention: Angelo Lombardo, Esq.	c/o Athene Asset Management, L.P. 2121 Rosecrans Avenue, Suite 5300 El Segundo, CA 90245 Attn: Stephen Hanover
c/o Athene Asset Management, L.P. 2121 Rosecrans Avenue, Suite 5300 El Segundo, CA 90245 Attn: Legal Department	Apollo Global Management 9 West 57 th Street, Floor 43 New York, NY 10019 Attn: Jay Jablonski
c/o Meritz Alternative Investment Management 17F Three IFC, 10 Gukjegeumyung-ro, Yeongdeungpo-gu Seoul, 07326, South Korea Attention: Jean-Seok (Joseph) Oh Facsimile No. 82-2-6336-2999 Email: joseph.oh@meritz.co.kr	c/o Meritz Alternative Investment Management 17F Three IFC, 10 Gukjegeumyung-ro, Yeongdeungpo-gu Seoul, 07326, South Korea Attention: Kyungmin Kim Facsimile No. 82-2-6336-2999 Email: kmkim@meritz.co.kr
T-C M-T REIT LLC c/o Teachers Insurance and Annuity Association of America 730 Third Avenue New York, NY 10017 Attention: Direction – Global Real Estate/Fixed Income Investment ID# 8442 Authorization # AAA7869	T-C M-T REIT LLC c/o Teachers Insurance and Annuity Association of America 730 Third Avenue New York, NY 10017 Attention: Associate General Counsel, Direct Asset Management Law Investment ID# 8442 Authorization # AAA7869

245 Park Avenue, New York, New York

November 12, 2021

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c/o SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170 Attention: Andrew Mathias Facsimile No. 212-356-4136	c/o SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170 Attention: Andrew S. Levine, Esq. Facsimile No. 646-293-1356
Greenberg Traurig, LLP 200 Park Avenue New York, NY 10166 Attention: Gary S. Kleinman, Esq. Facsimile No. 212-801-6400	245 Park Mezz Funding LLC c/o SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170 Attention: Andrew S. Levine Facsimile No. 212-356-4135
SL Green Realty Corp. 420 Lexington Avenue New York, NY 10170 Attention: Marc Holliday Facsimile No. 646-293-1321	Greenberg Traurig, LLP The MetLife Building 200 Park Avenue New York, NY 10166 Attention: Gary S. Kleinman, Esq. Facsimile No. 212-801-6400

CERTIFICATE OF SERVICE

I, William F. Taylor, Jr., certify that on February 23, 2022, I caused a true and correct copy of the foregoing *Limited Objection of Wilmington Trust, National Association, as Trustee, and Wells Fargo Bank, National Association, as Trustee, to Mezzanine Lenders' Motions for Adequate Protection and Relief from Stay [D.I. 384, 385, 387, and 401]* to be served upon the below listed parties via electronic mail.

/s/ William F. Taylor, Jr.

William F. Taylor, Jr. (No. 2936)

Robert J. Dehney
Curtis S. Miller
Daniel B. Butz
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, 16th Floor
Wilmington, Delaware 19801
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
dbutz@morrisnichols.com

Rachel C. Strickland
Debra M. Sinclair
James C. Dugan
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099
Email: RStrickland@willkie.com
DSinclair@willkie.com
JDugan@willkie.com

Matthew Gurvitz
Willkie Farr & Gallagher LLP
2029 Century Park East
Los Angeles, CA 90067-2905
Email: MGurvitz@willkie.com

Allison S Mielke
Edmon L. Morton
Young Conaway
Rodney Square
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