

SECOND SUPPLEMENT TO
DECLARATION OF EASEMENTS AND COVENANTS

This Second Supplement to Declaration of Easements and Covenants (this **"Supplement"**) is made on September 25, 2019 by West Orange Office Executive Park LLC, a Delaware limited liability company (the **"Owner"**), having an address at 782 Lyons Avenue, Irvington, New Jersey 07011.

RECITALS

WHEREAS, the Owner owns the following four (4) properties in the Township of West Orange, Essex County, New Jersey (each, a **"Property"** and, collectively, the **"Properties"**):

<u>Address</u>	<u>Tax Map Block</u>	<u>Tax Map Lot</u>
10 Rooney Circle	155	41.02 (formerly 41B) ("10 Rooney")
100 Executive Drive	155	40.02 (formerly 40B) ("100 ED")
200 Executive Drive	155	42.02 (formerly 42B) ("200 ED")
300 Executive Drive	155	42.01 (formerly 42A) ("300 ED")

WHEREAS, the Properties are the subject of a certain Declaration of Easements and Covenants dated August 1, 1977 entered into by and between Paragon Enterprises, a general partnership (**"Paragon"**) and Executive Hill Associates, a general partnership (**"Executive Hill"**) which was recorded on August 17, 1977 in the Essex County Register's Office in Deed Book 4578, page 187, et seq. (the **"Declaration"**); and

WHEREAS, Paragon and Executive Hill entered into a certain Supplement to Declaration of Easements and Covenants dated September 27, 1978, which was recorded on October 6, 1978 in the Essex County Register's Office in Deed Book 4820, page 1011 et seq. (the **"Supplement"**) and, together with the Declaration, the **"Easement Agreement"**).

WHEREAS, the Easement Agreement establishes certain roadway easements, and certain water line and sewer line easements, as more particularly described therein and further provides for the maintenance and repair thereof; and

WHEREAS, the Owner has contracted to convey title to 100 ED and 200 ED to a third party (such third party, together with its successors and assigns, is referred to herein as the **"Residential Purchaser"**) for the construction of a residential development (the **"Proposed Development"**); and

WHEREAS, the Owner has contracted to convey title to 300 ED to a third party (such third party, together with its successors and assigns, is referred to herein as “**300 ED Owner**”) for the continued use of 300 ED as an office building; and

WHEREAS, in order to accommodate the Proposed Development, the Owner desires to further supplement the Easement Agreement in certain respects and on the terms and conditions as more particularly set forth herein.

NOW, THEREFORE, the Owner hereby declares for the benefit of Owner, its successors and assigns, including but not limited to Residential Purchaser, 300 ED Owner and all other future owners of the Properties, or any of them, as follows:

- 1) **Defined Terms.** Any capitalized terms used in this Supplement and not defined herein shall have the same meanings given them in the Easement Agreement.
- 2) **Easement Agreement in full force and effect.** Except as expressly supplemented herein, the Easement Agreement remains unmodified and in full force and effect.
- 3) **Residential Purchaser’s and 300 ED Owner Rights.** As of the date hereof, the rights granted herein to Residential Purchaser and 300 ED Owner are effective only as to Owner, and may be exercised only by Owner. The rights granted to Residential Purchaser herein shall not be effective as to, and may not be exercised by, Residential Purchaser until Owner conveys to Residential Purchaser title to 100 ED and 200 ED. The rights granted to 300 ED Owner herein shall not be effective as to, and may not be exercised by, 300 ED Owner until Owner conveys to 300 ED Owner title to 300 ED.
- 4) **Supplement to Easement Agreement.** The Easement Agreement is hereby supplemented in the following respects:
 - a) The Residential Purchaser is granted the right and, to the extent not already granted in the Easement Agreement, shall have a perpetual, non-exclusive easement over and under the Properties in connection with such right, to modify, renovate and beautify the Roadways, including but not limited to Roadway #4 located on 300 ED, the cost of which shall be at Residential Purchaser’s sole expense, which may include repaving thereof, the installation of additional curb cuts on the east side of Executive Drive (and related retaining walls and guardrails on the east side of Executive Drive, which shall be similar to the finished looking quality as the other retaining walls and guardrails as found on 300 ED), sidewalks, curbs, hydrants, lighting and landscaping, provided, however, that (i) the owners of 10 Rooney and 300 ED shall continue to have access to their respective properties pursuant to the curb cut(s) existing as of the date of this Supplement; (ii) pedestrian and vehicular ingress and egress to and from Rooney Circle for the owners and occupants of 10 Rooney and 300 ED shall be maintained at all times during any modification, renovation and beautification of the Roadways; and (iii) if any catch basins are to be added or relocated, Residential Purchaser shall provide to the owners of 10 Rooney and 300 ED ten (10) days’ prior notice thereof and any additional, or relocation of, catch basins shall be subject to the consent of the owners of 10 Rooney and 300 ED which consent shall not be unreasonably withheld, conditioned or delayed; and (iv) if

additional sidewalks are installed by Residential Purchaser which are not now located on 300 ED, then Residential Purchaser (x) shall be solely responsible for the cost of clearing snow from, maintaining and repairing such sidewalks; and (y) shall keep and maintain, and provide the owner of 300 ED with evidence of, commercial general liability insurance covering personal injury and property damage occurring on such sidewalks and naming the owner of 300 ED as an additional insured.

- b) The Residential Purchaser is granted the right and, to the extent not already granted in the Easement Agreement, shall have a perpetual, non-exclusive easement under the Properties in connection with such right (together with access over the Properties reasonably necessary to exercise the right and easement granted in this subsection (b)), to repair, replace and upgrade, the cost of which shall be at Residential Purchaser's sole expense, any of the stormwater lines and outfalls existing on 300 ED as of the date of this Supplement, provided, however, any such repair, replacement or upgrade thereof shall not result in (i) the permanent loss of any parking spaces located on 300 ED, and (ii) the closing of the Roadways so there is no ingress or egress for pedestrians and vehicles to and from 300 ED, and provided, further, if any repairs, replacements or upgrade of any of the existing stormwater lines and outfalls on 300 ED results in additional stormwater onto 300 ED that materially adversely affects 300 ED, then the Residential Purchaser, shall, at Residential Purchaser's sole expense, take all actions reasonably necessary to prevent such additional stormwater runoff from materially adversely affecting 300 ED. The Residential Purchaser shall have a perpetual, non-exclusive easement over and under 300 ED to use, maintain, repair and replace the existing stormwater lines and outfalls located thereon that service and benefit 100 ED and 200 ED.
- c) The Residential Purchaser is granted the right and, to the extent not already granted in the Easement Agreement, shall have a perpetual, non-exclusive easement under the Properties in connection with such right (together with access over the Properties reasonably necessary to exercise the right and easement granted in this subsection (c)), to repair, replace or upgrade any water, sanitary sewer, telecommunication, electrical and gas lines, conduits and cables, if any, located on 300 ED and serving 100 ED or 200 ED as of the date of this Supplement, provided, however, any such repair, replacement or upgrade thereof shall not result in (i) the permanent loss of any parking spaces located on 300 ED, and (ii) the closing of the Roadways so there is no ingress or egress for pedestrians and vehicles to and from 300 ED.
- d) The Residential Purchaser is granted the right and, to the extent not already granted in the Easement Agreement, shall have a perpetual, non-exclusive easement under the Properties in connection with such right (together with access over the Properties reasonably necessary to exercise the right and easement granted in this subsection (d)), to install under the Roadways (or, with respect to telecommunication and electrical lines, and conduits and cables, also over the Roadways), the initial cost of which shall be at Residential Purchaser's sole expense, new water, sanitary sewer, telecommunication, electrical and gas lines, conduits and cables servicing 100 ED and 200 ED, provided, however, in no event shall the installation of any such lines, conduits or cables result in the closing of the Roadways so that there is no pedestrian or vehicular ingress and egress

to and from Rooney Circle for the owner and occupants of 10 Rooney and 300 ED, and provided, further, that if any such existing utilities are located above ground they remain in their current location or, if moved or installed elsewhere, Residential Purchaser shall provide to the owners of 10 Rooney and 300 ED ten (10) days' prior notice thereof and any such movement or installation shall be subject to the consent of the owners of 10 Rooney and 300 ED which consent shall not be unreasonably withheld, conditioned or delayed. The Residential Purchaser shall have a perpetual, non-exclusive easement over and under the Roadway to install, use, maintain, repair and replace such water, sanitary sewer, telecommunication, electrical and gas lines that service and benefit 100 ED and 200 ED, provided, however, the Residential Purchaser shall be solely responsible for all costs and expenses incurred for the installation, use, maintenance, repair and replacement thereof, and provided, further, (i) the easement in favor of 300 ED for the Water Line (as such term is defined in the Declaration), as extended in the Supplement, shall terminate and no longer burden any of the Properties, at such time as any new water line installed in the Roadways is connected to the water utility line presently on and servicing 300 ED, is fully operational and has adequate capacity to service the existing use of 300 ED as of the date hereof; and (ii) the easement in favor of 100 ED for the Sewer Line (as such term is defined in the Declaration) shall terminate and no longer burden any of the Properties at such time as any new sanitary sewer line installed in the Roadways is connected to the sanitary sewer line presently on and servicing 300 ED, is fully operational and has adequate capacity to service the existing use of 300 ED as of the date hereof. If a gas line is installed in Roadway #4, the Residential Purchaser shall install at Residential Purchaser's sole expense a "stub" inside the boundary of 300 ED for future use by the 300 ED Owner to connect the building on 300 ED with the gas line installed in Roadway #4.

- e) The 300 ED Owner shall have the right to relocate any utility lines located on 300 ED to another portion of 300 ED, at the sole expense of 300 ED Owner, in order to accommodate any future development of 300 ED, provided, however, that at no time shall any of the utilities servicing 100 ED or 200 ED be interrupted or adversely affected.
 - f) The Residential Purchaser shall have a perpetual, non-exclusive easement over and under the Properties to access, use, maintain, repair, supplement, modify and replace the piping, outfalls and swale, if any, that presently service or are used in connection with the existing retention pond or retention basin on 100 ED and 10 Rooney as may be required or desirable to service the Proposed Development.
- 5) **Costs/Lien-Free Construction.** Residential Purchaser and 300 ED Owner shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of any of the Properties, all costs and expenses incurred by either of them in connection with the exercise of the rights granted in this Supplement including but not limited to the prompt repair, maintenance and replacement of the other's property affected by the exercise of that party's rights hereunder. Residential Purchaser and 300 ED Owner hereby acknowledge and agree that if any lien is filed against any of the Properties as a result of the exercise of the rights granted in this Supplement, and such lien has not been removed of record within thirty (30) days of the date of the receipt of notice of initial filing of such lien, then the party

incurring any such costs and expenses shall be in default of this Supplement, and the owner of any of the Properties encumbered by such lien shall have the right to exercise any or all of its remedies at law and in equity.

- 6) **Compliance with Laws.** Residential Purchaser and of 300 ED Owner shall construct any improvements undertaken pursuant to this Supplement in a workmanlike manner and in compliance with the applicable statutes, ordinances, rules, and regulations of all governing public authorities as those statutes, ordinances, rules, and regulations are amended from time to time.
- 7) **Transferability.** Owner hereby acknowledges and agrees that the easements and other rights conferred by this Supplement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the owners of the Properties and their respective grantees, heirs, personal representatives, successors, and assigns.
- 8) **Indemnification.**
 - a) Residential Purchaser shall defend, indemnify and hold harmless Owner, 300 ED Owner and their respective tenant(s) and their respective successors and assigns, members, directors, shareholders, employees, engineers, consultants, agents, contractors and/or invitees (collectively, the "Indemnified Parties"), as the case may be, from and against any and all damages, expenses, judgments, fines, penalties, and claims (including but not limited to reasonable attorneys' fees) resulting from or arising out of the exercise by Residential Purchaser of its rights under this Supplement, except for those claims that may arise out of the negligence or willful misconduct of one of the Indemnified Parties.
 - b) 300 ED Owner shall defend, indemnify and hold harmless Owner, the Residential Purchaser and their respective tenant(s) and their respective successors and assigns, members, directors, shareholders, employees, engineers, consultants, agents, contractors and/or invitees (collectively, the "Indemnified Parties"), as the case may be, from and against any and all damages, expenses, judgments, fines, penalties, and claims (including but not limited to reasonable attorneys' fees) resulting from or arising out of the exercise by 300 ED Owner of its rights under this Supplement, except for those claims that may arise out of the negligence or willful misconduct of one of the Indemnified Parties.
- 9) **Binding Effect.** The provisions of this Supplement shall inure to the benefit of and be binding upon Owner and its successors and assigns.
- 10) **Severability.** If any of the provisions of this Supplement shall be deemed invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Supplement, but rather the entire Supplement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Owner, its successors and assigns, shall be construed and enforced accordingly. Owner assumes no responsibility or liability for any condition which may be disclosed by the entry onto any of the Properties in the exercise of any of the rights granted herein.

- 11) **Counterparts**. This Supplement may be executed in one or more counterparts, together which shall constitute the same instrument.
- 12) **Governing Law**. This Supplement and the rights and obligations of the Owner, its successors and assigns, shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.
- 13) **Amendment/Modification**. This Supplement may be amended, modified or supplemented only upon the execution of a written agreement by the owners of the Properties.
- 14) **No Third Party Beneficiaries, Rights in Public, or Implied Easements**. Nothing contained in this Supplement is intended or shall be deemed (a) to create or confer any rights upon any third person not a party hereto or specifically referred to herein (such as the Residential Purchaser and 300 ED Owner) whether as a third-party beneficiary or otherwise, (b) to create any rights in the general public or dedicate for public use any portion of the Properties, or (c) to imply a grant or creation of any easement other than the easements expressly granted herein.
- 15) **Insurance**. During the time Residential Purchaser exercises any of its rights with respect to 300 ED, Residential Purchaser agrees (i) to maintain, at its expense, and keep in force at all times for all installations made by the Residential Purchaser on 300 ED's property. a policy of commercial general liability insurance, including a contractual liability endorsement, and personal injury liability coverage, from an insurer reasonably acceptable to the owner of 300 ED, which shall include coverage against claims for any injury, death, or damage to persons or property occurring on, in or about 300 ED resulting or arising from the exercise by the Residential Purchaser of any of its rights or easements under the Easement Agreement or this Supplement with respect to 300 ED, with a combined single limit of not less than \$3,000,000 together with an umbrella policy as may be reasonably required by a present or future lender on 300 ED and/or as may be maintained by owners of similar t buildings in the future with respect to 300 ED; and (ii) the owner of 300 ED shall be named as an additional insured on such insurance policy; and (iii) prior to making any entry onto 300 ED, Residential Purchaser shall furnish to the owner of 300 ED: (a) a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to the owner of 300 ED; and (b) proof of payment of the insurance premium.
- 16) 300 Ed shall be provided with at least 3 days' advance notice by Residential Purchaser prior to Residential Purchaser entering the property of 300 ED.

[SIGNATURE PAGE TO FOLLOW]

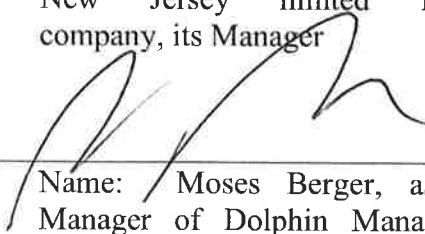
Owner has executed this Supplement as of the day and year first above written.

West Orange Office Executive Park, LLC
A Delaware limited liability company

By: West Orange Office Executive Park
Mezz LLC, a Delaware limited liability
company, sole member

By: West Orange Office Executive Park
LLC, a New Jersey limited liability
company, managing member

By: Dolphin Management LLC, a
New Jersey limited liability
company, its Manager

By: 
Name: Moses Berger, as Sole
Manager of Dolphin Management
LLC

New York
STATE OF ~~NEW JERSEY~~)
COUNTY OF Rockland) ss.:

On this 26th day of September, 2019 before me personally appeared MOSES BERGER, who I am satisfied is the individual who executed this instrument and, who being duly sworn by me, did depose and say that (a) he is the sole manager of Dolphin Management LLC, which is the sole member of West Orange Office Executive Park LLC, a New Jersey limited liability company, which is the managing member of West Orange Office Executive Park Mezz LLC, a Delaware limited liability company, which is the Manager of West Orange Office Executive Park, LLC, a Delaware limited liability company, and (b) he is authorized to execute this instrument on behalf of such entities, and (c) he executed this instrument as the act of such entities.

MELINDA MALLIA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MA6320107
Qualified in Rockland County
My Commission Expires 03-02-2023


Notary Public