

## ACCESS EASEMENT AND AGREEMENT

**THIS ACCESS EASEMENT AND AGREEMENT** (this “**Easement**”) is made effective as of April 9, 2019 (the “**Effective Date**”) by and between Realty Income Corporation, a Maryland corporation having an address of 11995 El Camino Real, San Diego, CA 92130 (“**Grantor**”) and Banyan North, LLC, a Maine limited liability company having an address of 13 Kinnaird Street, Cambridge, Massachusetts 02139 (“**Grantee**”).

### WITNESSETH:

WHEREAS, Grantor is the owner of certain real property in Portland, Cumberland County, Maine, by virtue of a Deed from Rite Aid of Maine, Inc., a Maine corporation, to Grantor dated December 10, 2007 and recorded in the Cumberland County Registry of Deeds in Book 25785, Page 34 and more particularly described on Exhibit A attached hereto (“**Grantor Parcel**”);

WHEREAS, Grantee is the owner of certain real property adjacent to the Grantor Parcel in Portland, Cumberland County, Maine, by virtue of a Quitclaim Deed With Covenants from TB Portland 810, LLC, a Maine limited liability company, to Grantee dated June 23, 2017 and recorded in the Cumberland County Registry of Deeds in Book 34113, Page 290 and more particularly described on Exhibit B attached hereto (“**Grantee Parcel**”);

WHEREAS, Grantee has agreed to convey the Grantee Parcel, and the improvements located thereon, to Portland TB LLC, a Massachusetts limited liability company (“**Buyer**”). The owner of the Grantor Parcel, from time to time, and the owner of the Grantee Parcel, from time to time, shall hereafter be referred to each as an “**Owner**” or collectively, as the “**Owners**”;

WHEREAS, in connection with, and as a condition of, the sale of the Grantee Property to Buyer, Grantor has agreed to grant to Grantee, for the benefit of the Grantee Parcel, a non-exclusive easement over a portion of the Grantor Parcel as more particularly shown on the plan attached hereto as Exhibit C (the “**Easement Area**”) in accordance with and subject to the terms and conditions contained in this Easement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as of the Effective Date of this Easement, Grantor and Grantee hereby agree as follows:

1. **EASEMENT:** Grantor hereby grants to Grantee, its successors and assigns (including, without limitation, the Buyer), a perpetual, non-exclusive easement and right to use the Easement Area for the benefit of the Grantee Parcel and its occupants, employees, representatives, tenants, customers, guests and invitees for the sole purpose of pedestrian and vehicular ingress and egress to and from the Grantee Parcel to Washington Avenue via the

Washington Avenue curb cut on Grantor Parcel as shown on Exhibit C. The rights and easement created hereby shall run with the land.

2. **CONDITIONS OF USE OF EASEMENT AREA**: By its acceptance of this easement, Grantee agrees, for itself, and its successors and assigns, that entry on the Grantor Parcel, and use of the easement hereby granted shall be SUBJECT TO the following conditions:

a. Grantee's use of the Easement shall be conducted in conformity with all applicable laws and restrictions encumbering the Grantor Parcel, and shall be at the sole risk of Grantee. Grantor makes no representations or warranties of any kind, either express or implied, with respect to the Grantor Parcel or the condition thereof. The rights granted by this Easement are subject to (i) all matters of record, applicable laws, ordinances, statutes, orders, requirements and regulations to which the Grantor Parcel is subject, and (ii) any state of facts which a new or updated survey or physical inspection of the Grantor Parcel might disclose. Grantee agrees that Grantor shall not be liable to Grantee for any claims arising from use of the easement hereby granted to Grantee, Grantee's invitees, employees, agents, contractors, subcontractors, tenants, and its respective heirs, successors and assigns, and others to which Grantee may grant the right to exercise Grantee's rights herein, including but not limited to claims for personal injury, death, damage to property or loss of business, except to the extent such damage is caused by negligence or the willful misconduct of Grantor or its agents, contractors or employees or others claiming by, through or under Grantor. Grantee hereby agrees to indemnify, defend and hold harmless Grantor and its successors and assigns from any claims and costs and expenses (including reasonable attorneys' fees) arising from use of the easement hereby granted by Grantee or Grantee's employees, tenants, invitees, contractors, agents, successors and assigns, except to the extent caused by the negligence or willful misconduct of Grantor, its agents, contractors, or employees or others claiming by, through or under Grantor.

b. Grantee's use of the Easement Area shall not unreasonably interfere or materially interfere with the Grantor's use of the Grantor Parcel or the business or operations being conducted on the Grantor Parcel. Grantor and Grantee agree that no walls, fences, parked vehicles, trailers or barriers of any kind that prevent the free flow of vehicular traffic shall be constructed, erected or allowed on or across the Easement Area; provided, however, that speed humps and other reasonable traffic controls may be installed by Grantor so long as access driveways and entrances are not closed or blocked. For the avoidance of doubt, Grantee acknowledges and agrees that neither Grantee, nor Grantee's employees, tenants, invitees, contractors, agents, successors and assigns, shall park vehicles on any portion of the Grantor Parcel

c. In connection with the acquisition of the Grantee Parcel by Buyer, Buyer shall lease all or a portion of Grantee Parcel to Charter Foods North, LLC, a Tennessee limited liability company ("**Charter**") initially for the operation of a Taco Bell restaurant, and Charter

is relying upon this Easement to provide Charter, its customers, employees, agents, vendors and contractors full and uninterrupted access to the Grantee Parcel via the Easement.

d. During such time as Charter or any other person or entity leases all or a portion of the Grantee Parcel (“Tenant”) and Grantee has delivered possession of such property to the Tenant, the Tenant may exercise all of Grantee’s rights under this Easement, subject to the terms and conditions contained herein.

### **3. MISCELLANEOUS.**

a. In the event either Owner, or any successors or assigns of either Owner convey title to or ground lease the Grantor Parcel or the Grantee Parcel, respectively, such Owner shall notify the other Owner within thirty (30) days thereafter (although failure to send such notice shall not be considered a default under this Easement). The Owner shall provide the name, address, and telephone number of the transferee to the other Owner.

b. The parties hereto agree to use commercially reasonable efforts to accomplish the overall purpose of this Easement and to address any future issues related to the terms and conditions of the Easement.

c. The Easement herein granted and the agreements herein contained shall be easement and covenants running with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

d. Except as may be permitted under law and/or in equity, no default or other breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Easement or any rights created herein.

e. This Easement shall be governed in accordance with the laws of the State of Maine. This Easement may be amended, modified or terminated only in writing, executed and acknowledged by the Owners of the Grantor Parcel and the Grantee Parcel, respectively.

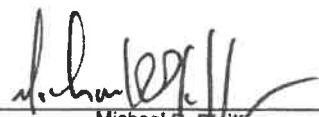
f. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any property to the general public for any public use or purpose whatsoever.

***[Remainder of Page Intentionally Blank. Signatures on Following Pages.]***

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed the day and year first above written.

**GRANTOR:**

REALTY INCOME CORPORATION,  
a Maryland corporation

By:   
Name: Michael R. Pfeiffer  
Title: Executive Vice President,  
Chief Administrative Officer,  
General Counsel



**ACKNOWLEDGMENT**

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

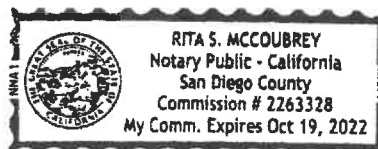
STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On April 9, 2019, before me, Rita McCoubrey, Notary Public, personally appeared Michael R. Pfeiffer, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.




  
Signature of Notary Public

(Notary Seal)

**GRANTEE:**

BANYAN NORTH, LLC,  
a Maine limited liability company

By:   
Name: ERIC U. HENDERSON  
Title: MEMBER

STATE/Commonwealth of Massachusetts  
COUNTY OF Middlesex

April 9<sup>th</sup>, 2019

Then personally appeared the above-named Eric U. Henderson, as  
Manager of Banyan North, LLC and acknowledged the foregoing instrument to be his/her free act  
and deed, as Manager of Banyan North, LLC.

Before me, Nicholas J. Iacucci



Notary Public:

My Commission expires: 05/17/2024



**BUYER:**

PORTLAND TB LLC,  
a Massachusetts limited liability company


  
By: \_\_\_\_\_  
Name: Gregg Liscioffi  
Title: Manager

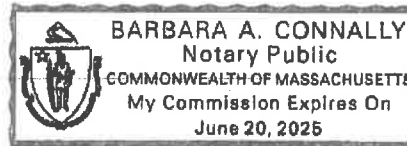
STATE/Commonwealth of Massachusetts  
COUNTY OF Worcester

April 9, 2019

Then personally appeared the above-named Gregg Liscioffi, as  
Manager of Portland TB LLC and acknowledged the foregoing instrument to be his/her free act  
and deed, as Manager of Portland TB LLC.

Before me,

  
Notary Public:  
My Commission expires: 6-20-25



**EXHIBIT A**

**LEGAL DESCRIPTION OF GRANTOR PARCEL**

A certain lot or parcel of land situated on the southerly side of Allen Avenue in the City of Portland, County of Cumberland and State of Maine described as follows:

Beginning at a point on the southerly sideline, of Allen Avenue at the northeasterly comer of land now or formerly of Amato's Enterprises, Inc.:

Thence N 53° 57' 07" E along the southerly sideline of Allen Avenue 343.93 feet;

Thence S 46° 39' 10" E along land now or formerly of Northport Realty Trust 27.43 feet;

Thence S 03° 36' 15" E along land of said Northport Realty Trust 133.12 feet;

Thence S 14° 31' 45" E along land of said Northport Realty Trust 149.05 feet;

Thence S 68° 30' 00" W along land of said Northport Realty Trust 242.78 feet;

Thence S 68° 06' 08" W along said land of said Northport Realty Trust and land now or formerly of Chau Tsan 180.55 feet to the westerly sideline of Washington Avenue;

Thence N 15° 16' 07" W along the westerly sideline of Washington Avenue 57.62 feet to the southwesterly comer of land of said Amato's Enterprises, Inc.;

Thence N 68° 26' 47" E along the southerly line of land of said Amata's Enterprises, Inc. 148.69 feet;

Thence N 27° 45' 10" W along the westerly line of land of said Amato's Enterprises, Inc. 157.83 feet to the southerly sideline of Allen Avenue and the point of beginning.

Containing 1.95 acres.

Basis of bearings magnetic 1942.

Meaning and intending to describe the same premises conveyed to Realty Income Corporation, by deed of Rite Aid of Maine, Inc., a Maine corporation, dated December 10, 2007 and recorded in the Cumberland County Registry of Deeds in Book 25785, Page 34.

**EXHIBIT B**

**LEGAL DESCRIPTION OF GRANTEE PARCEL**

A certain parcel of land situated in the City of Portland, in the County of Cumberland and the State of Maine bounded and described as follows:

Beginning at a point on the northerly side of Washington Avenue (Route 26) at the division line between Michael S. Orr and Chau Tsan, being the southeast corner of the parcel herein; thence

N 32° 00' 51" W along Washington Avenue a distance of One Hundred Nine and Eighty Hundredths feet (109.82') to land now or formerly of Realty Income Corporation; thence

N 51° 37' 21" E along Realty Income Corporation a distance of One Hundred Seventy and Five Hundredths feet (170.05') to land now or formerly Northport Upham LLC; thence

S 36° 35' 39" E along Northport Upham LLC a distance of One Hundred and Six and Five Hundredths feet (106.05") to land now or formerly of Michael S. Orr; thence

S 50° 36' 51" W along land now or formerly Michael S. Orr a distance of One Hundred Seventy Eight and Ninety Five Hundredths feet (178.95') to the point of beginning.

Said parcel containing 18,757 square feet or 0.431 acres more or less.

Meaning and intending to describe the same premises conveyed to Banyan North, LLC, by deed of TB Portland 810, LLC, dated June 23, 2017, and recorded in the Cumberland County Registry of Deeds in Book 34113, Page 290.



**EXHIBIT C**

**EASEMENT AREA**

