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I. SCOPE OF ASSIGNMENT AND SUMMARY OF OPINIONS

1. I have been retained by Jeffer Mangels Butler & Mitchell, LLP ("JMBM") as an architecture and construction management expert in the matter *3500 Sepulveda, et al. v. RREEF America REIT II Corporation BBB, et al.* (Case No. 2:17-cv-08537-R-JPRx). I have been asked to review plans, drawings, renderings, and narrative and legal documents describing Defendant RREEF America REIT II Corporation BBB's ("RREEF") proposed expansion and renovation of the Manhattan Village Shopping Center ("Shopping Center") and to opine on the impacts the Project has had and will continue to have on the commercial property located at 3500 Sepulveda Blvd. (the "Hacienda Building") owned by Plaintiffs 3500 Sepulveda, LLC and 13th & Crest Associates, LLC, and Counterdefendant 6220 Spring Associates, LLC (collectively the "Hacienda Partners").

2. In 1980, the predecessors in interest to RREEF, Macy's West Stores, Inc., and the Hacienda Partners entered into a Construction, Operation and Reciprocal Easement Agreement ("COREA") entitling the COREA parties and their tenants to mutual use of the common areas within the Shopping Center for ingress, egress, and parking. On October 8, 2008, RREEF, the owner of a majority of the Shopping Center, and the Hacienda Partners, owners of the Hacienda Building, entered into a "Settlement Agreement" concerning, among other things, certain proposed construction within the common area in accordance with a set of exhibits attached to the Settlement Agreement, including an exhibit titled "Site Plan: Final- All Phases Completed, dated August 1, 2008." These documents represent the expansion and improvements the Hacienda Partners agreed to. The most recent plan for construction made available to Plaintiffs, titled "Illustrative Site Plan" and dated August 8, 2017, shows an entirely different layout and design from the site plan included in the Settlement Agreement.

3. This new site plan has significant impacts on the amount of parking available for Hacienda Building tenants, visitors and customers. The 8/01/08 Site Plan attached to the Settlement Agreement shows 509 spaces in a 2-level parking structure with ½ level below grade (semi-subterranean) directly opposite the Hacienda Building, 42 parking spaces directly in front of said parking structure, 20 spaces at the northwest corner alongside the North Parking Structure, and another 43 spaces on grade directly to the north of the Hacienda Building. Accordingly, the number of parking spaces *in close proximity* to the Hacienda Building totals 614 spaces in the 8/01/08 Site Plan attached to the Settlement Agreement.

4. The Illustrative Site Plan dated August 8, 2017 shows a 3-level parking structure, also directly in front of the Hacienda Building, but with all levels above grade, containing 360 parking spaces plus 64 spaces directly in front the garage. There are an additional 21 parking spaces (2 handicap) alongside a vehicle ramp for the 3-level garage included in the area shown on the August 1, 2008 Final Site Plan. Consequently, the number of parking spaces *in close proximity* to the Hacienda Building in the current plan for construction is 445 spaces, a reduction of 169 parking spaces accessible for Hacienda Building tenants, visitors and customers.

5. Further, there are substantial differences in building scale, parking count, accessibility and visibility between the August 1, 2008 Settlement Agreement Site Plan and the August 8, 2017 Site Plan for Construction. In addition to the reduced parking count, RREEF has chosen to expand significantly the retail footprint or square footage of shops and restaurants, thereby at the same time, increasing the square footage of such retail establishments and decreasing the amount of available parking for patrons and tenants of the Hacienda Building. The result is the consequential loss of nearby parking for the Hacienda Building, affecting its ability to attract and maintain tenants, and reducing its accessibility and exposure to potential visitors and customers.

II. QUALIFICATIONS, EXPERIENCE, AND COMPENSATION

6. With a Bachelor of Arts, Major in Architecture degree from Washington University, a Bachelor of Architecture degree from Southern California Institute of Architecture, and a Master of Real Estate Development degree from University of Southern California, I have been a licensed architect practicing in southern California since 1982, and a construction manager on behalf of public and private owners, and real estate developers since 1980. Since 1980, I have been continuously involved with the design and construction of banks, office buildings, corporate and tenant improvements, restaurants, hospitals and medical facilities, hotels, themed resorts and casinos, retail/mall/big box and regional shopping centers, high-rise residential and mixed-use developments, multi-family apartments and condominiums, K-12, college and university facilities, and custom and production single family homes. Attached as Exhibit A is a copy of my current *curriculum vitae*.

7. I have also written extensively and been published in trade magazines and journals on topics concerning destructive testing, moisture and waterproofing problems, managing risk during project delivery, avoiding construction litigation, construction management, kitchen design, and an article titled “Manhattan Village Solves Site Drainage and Water Intrusion Issues with Professionalism” about the large multi-family residential development directly behind the Shopping Center at issue in this case. All publications I have authored are listed at the end of my *curriculum vitae* in Exhibit A, two of which were published in the last ten years.

8. Since 1992, I have served as an expert witness on at least 40 cases involving the standard of care for architects, construction defects and disputes, architectural design and building codes, zoning and permit approvals, construction industry standards, financial analysis of real estate development, construction costs and scheduling, construction management practices in both private and public sectors, site grading and drainage improvements, change orders, construction

documents, progress payments, “hard” versus “soft” costs, schedule of values, project documentation, and “slip and fall” incidents due to site and building design and construction. I have testified in court twice, most recently on August 1 of this year in a lawsuit against the City of San Diego. Attached hereto as Exhibit B is a list of all cases in which I have offered testimony as an expert, including those I have testified in during last four years.

9. I am being compensated for my expert services in this case at the rate of \$250 an hour for non-testifying work and \$350 an hour for testifying. My compensation has no impact on my opinions reflected in this report.

III. MATERIALS REVIEWED

10. Attached as Exhibit C to this report is a list of materials that have been provided to me by counsel for the Hacienda Partners, which I have reviewed and have aided me in forming the opinions reflected in this report. In summary, I reviewed (1) the pleadings and court filings in this case; and (2) a box full of 11" x 17" Schematic Design drawings depicting the Shopping Center and Hacienda building as well as materials related to Height Variance, Utility Relocation, City Gateway Sign, Village Shops, Fountain Elevation, and Vision. It is noteworthy that amongst all the architectural work product I reviewed, I saw no renderings of the Shopping Center that included the Hacienda Building.

IV. CASE BACKGROUND

11. The Hacienda Building is located at 3500 Sepulveda Boulevard on the west side of the Shopping Center on a 0.7 acre parcel. The Hacienda Building is a 2-story commercial 19,840 rentable square foot property providing retail, restaurant, and office uses to its tenants, which include Tin Roof Bistro, Innovative Fertility Center, Coleman Frost LLP, MB Wine Company, SusieCakes, and RPM Mortgage.

12. When the Hacienda Building was acquired on November 16, 2005 by the Hacienda Partners, they also obtained easements for ingress, egress, and parking privileges throughout the “Common Area” of the Shopping Center via the COREA, executed by the parties’ predecessors in interest in November 1980. The COREA defines the Common Area as “all of the Shopping Center not covered by Stores or the Hacienda Building”, all areas within the boundaries of the Shopping Center for the general use and convenience of the Hacienda Building and its tenants.

13. The purpose of the COREA is to 1) provide for the integrated use of the properties owned by each party as a regional shopping center, 2) grant mutual easements across the parties’ properties, and 3) make mutual provisions for the construction, maintenance, and operation of the Common Area. The easements run with the land to bind and benefit successors in interest and “every person having any fee, leasehold or other interest in any part of the” Shopping Center. Consequently, the owners and tenants of the Hacienda Building benefit from the non-exclusive easement and are entitled full access to and use of the Common Area for parking, ingress, and egress purposes.

14. The Hacienda Partners pay monthly fees pursuant to the COREA to operate, maintain and improve the Shopping Center. The COREA allows the “Prime Parties”, presently RREEF and Macy’s, to amend the COREA, however, any amendment that directly impacts the Hacienda Building must be approved or consented to by the Hacienda Building’s owners (*i.e.* the Hacienda Partners).

15. On October 8, 2008, RREEF and the Hacienda Partners entered into a Settlement Agreement to address 1) use of the ground floor space in the Hacienda Building, 2) RREEF’s proposed parking structures, 3) parking for the Hacienda Building, 4) signage for the Hacienda Building and Theaters, and 5) Hacienda Partner’s costs for maintenance of the Common Areas. The parties also agreed to 1) have quarterly meetings throughout the construction project, 2)

RREEF agreed to maintain 240 parking spaces in lot F during construction of the North Parking Structure and provide valet service, as needed, and 3) provide the Hacienda Partners 10 days' notice prior to submitting material revisions of the approved site plan to the City. However, RREEF is developing the Shopping Center in a manner that is incompatible with the previously agreed-upon site plans (including the "Site Plan: Final- All Phases Completed, dated August 1, 2008") contained in the October 8, 2008 Settlement Agreement.

16. The Final Site Plan dated August 1, 2008 agreed upon in the Settlement Agreement shows 43 parking spaces immediately adjacent north of the Hacienda Building on the same grade level as the building. These 43 spaces are not included in the current plans for construction. The Final Site Plan depicts a semi-below grade parking structure with a 2nd level above, just 9'-4" to the top of the second level railing with surface parking in front facing the Hacienda Building. A later architectural drawing and rendering dated September 9, 2017 shows the next-door neighbor to the Hacienda Building, the Wells Fargo parcel, redesigned for restaurant use with an increase of 15 parking spaces, from 27 spaces to a proposed total of 42 spaces.

17. Callison/RTKL Architects, highly talented and recognized retail-focused architects, designers and planners prepared multiple iterations of the Shopping Center site plan, elevations and renderings between the Settlement Agreement's Final Site Plan dated August 1, 2008 and the August 8, 2017 Illustrative Site Plan. Numerous design documents were produced during this period by Callison/RTKL, notably between 2009 and 2017. Except for the August 1, 2008 Site Plan showing the 43 parking spaces immediately contiguous to the Hacienda Building, all subsequent site plans, elevations and renderings omitted and/or deleted this parking needed by tenants and customers of the Hacienda Building.

18. Additionally, the North Parking Structure, rather than being submerged below grade ½ level to minimize its height in front of the Hacienda Building, has subsequently grown to

3 levels above grade with no parking below-grade, at all. This unadorned concrete parking structure is now positioned 112 feet directly opposite the Hacienda Building with a surface parking lot in front of the first level of the structured parking. There are then 2 levels of structured parking above that, the second level set back 112 feet, and the third level set back another 60 feet. The entire structure stands approximately 30' tall, including elevator enclosures and light fixtures.

19. The 3-level, 360-car parking structure (not including the 64 spaces on grade) is positioned *directly* in front of the Hacienda Building, blocking views to the Shopping Center and limiting visibility for potential customers and patrons of the Hacienda Building. The tenants are the most damaged victims in this drama. The prevalent view from the Hacienda Building shall be of a 3-story parking structure each level set back or staggered with open parking, such that the Hacienda Building's view will be a *sea of parking*. Together with the constant line of cars navigating Carlotta Way to access parking at the North Parking Structure and the Northeast Parking Structure (primarily for Macy's use), the location is impacted dramatically.

20. To better illustrate the staggered open 3-level parking structure proposed by RREEF for this location, I engaged the services of Margie Licauco, AIA, ML Architecture of Imaging ("ML Architecture"), with whom I have previously worked. For example, Ms. Licauco provided my firm, Vanir CM, with a rendering for a proposed college facility. Thus, I asked Ms. Licauco to prepare renderings showing a street level view of the North Parking Structure from the Hacienda Building, including in particular from the Tin Roof Bistro and SusieCakes, both of which are located in the front of the Hacienda Building. I also recommended an aerial rendering showing the Hacienda Building and the North Parking Structure. I provided ML Architecture all the site plans, building sections, and previous renderings prepared by Callison/RTKL that Plaintiffs' provided me. Ms. Licauco also visited the Shopping Center to take photos of the actual location, which she thereafter sent me for review. ML Architecture then created the renderings based on all

the site plans, building sections, and previous renderings that were provided. Attached as Exhibit D are renderings of the North Parking Structure from the vantage point of the outdoor seating at the Tin Roof Bistro. Attached as Exhibit E are renderings of the North Parking Structure from the vantage point of SusieCakes. Attached as Exhibit F is a rendering of the North Parking Structure from the vantage point of the Hacienda Building entrance. Attached as Exhibit G is a rendering showing the aerial perspective of the Hacienda Building and the North Parking Structure.

21. In order to compare Ms. Licauco's renderings depicting the North Parking Structure to what can currently be seen from the Hacienda Building, I asked Plaintiffs' counsel for photographs of the Shopping Center from the same vantage points as depicted in the renderings. Attached as Exhibit H are photographs Plaintiffs' counsel sent me showing the pre-construction view of the Shopping Center from the Tin Roof Bistro located on the ground floor and front of the Hacienda Building. Attached as Exhibit I are photographs Plaintiffs' counsel sent me that were taken on August 14, 2018 showing the view of the Shopping Center from the Tin Roof Bistro. Attached as Exhibit J are photographs Plaintiffs' counsel sent me that were taken on August 14, 2018 showing the view of the Shopping Center from SusieCakes. Attached as Exhibit K is a photograph Plaintiffs' counsel sent me that were taken on August 14, 2018 showing the front view of the Hacienda Building.

V. EXPERT OPINION

22. RREEF's construction in accordance with the most current site plan I have reviewed will eliminate essential Common Area parking for Hacienda Building tenants and customers without the Hacienda Partners' consent, and the on-going construction will obstruct access to and from the Hacienda Building for tenants and customers alike. As a licensed architect and construction manager since 1982, having worked on regional shopping centers like Manhattan Village Shopping Center with Callison between 2006 and 2008, and currently managing

construction of a \$22 million facility for Santa Monica College and the City of Santa Monica at the Civic Center, I have knowledge of the impacts and disruption caused to neighbors during utility relocation and installation, excavation, backfill operations, as well as vertical construction.

23. Based on the documents made available for my review, Jones Lang LaSalle (JLL), RREEF's construction manager, has provided the Hacienda Building owners and tenants limited information regarding RREEF's construction activities and plans, which has resulted in disruption, interference, and financial hardship for the tenants and the landlord. By creating barriers for convenient and accessible parking and on-going construction poorly and/or irregularly communicated to Hacienda Building tenants, the current design and construction has caused and will continue to cause significant economic hardship to Hacienda Building owners and tenants. Based on the multiple letters written by impacted tenants, these impacts do not appear to have been effectively mitigated by the construction team.

24. First, the staging of construction equipment will have a *significant* impact on the Hacienda Building, its occupants and visitors. Importantly, RREEF has now acknowledged that construction of the North Parking Structure will not be phased, but will rather be built all at one time. As a result, RREEF will not provide the 240 parking spaces on grade immediately in front of the Hacienda Building as promised in the August 1, 2008 Settlement Agreement.

25. Second, negative impacts to the Hacienda Building, its tenants, visitors and customers will intensify with construction of the North Parking Structure due to the adjacency of the Hacienda Building and the path of travel for trucks. While not a civil engineer, the soils in the existing parking lot will likely need to be removed and re-installed ("backfilled") to allow for the proper compaction upon which the 3-story parking structure is built. Because the site for construction of the 3-level, 360-car parking structure is very tight and limited, there may be nowhere nearby to deposit these soils during excavation. This means, unfortunately, that there

may be hundreds of trucks traveling back and forth hauling dirt right in front of the Hacienda Building.

26. Third, the ongoing construction and current site plan design negatively impacts the Hacienda Building businesses, which rely heavily on visibility and foot traffic. As designed, the large-scale development and expansion project will effectively isolate and separate the Hacienda Building from the remainder of the Shopping Center by blocking sight lines and views between the Hacienda Building and the rest of the Shopping Center. Since there are no sight lines from the rest of the Shopping Center to the Hacienda Building, potential customers have no way of knowing there is a very attractive restaurant, wine merchant, and custom bakery on the premises. The site plans do not depict a direct pedestrian connections from the rest of the Shopping Center to the Hacienda Building. Accordingly, the current site plan and architectural design for the Shopping Center (Illustrative Site Plan, dated August 8, 2017) fails to acknowledge the presence of the Hacienda Building.

27. Furthermore, the current site plans made available to the Hacienda Partners provide no amenities—such as signage, lighting, and landscaping—for the proper integration of the Hacienda Building into the remainder of the Shopping Center. These amenities could have encouraged visitors to patronize the Hacienda Building. With no lighting, landscaping, signage or amenities (seating, fountains, trellises, pavers, etc.) to connect the Hacienda Building to the rest of shopping center complex, foot traffic and visibility greatly diminish, thereby reducing rental income and diminishing the market value of the property. The Hacienda Building and its tenants are no longer in a position or location to enjoy the amenities of the Shopping Center which they have been part of historically.

28. Fourth, while the inclusion of a west-facing elevator and staircase at the west end of the North Parking Structure would have incentivized and encouraged pedestrian traffic to the

Hacienda Building, and was in fact contemplated by the August 1, 2008 Site Plan incorporated into the Settlement Agreement, even that has been eliminated. RREEF claims that the elevator was relocated due to the revised parking layout, when in fact a secondary 2-stop elevator could have been incorporated into the parking structure design at an additional construction cost of approximately \$80,000. Furthermore, a statement attributed to RREEF in Plaintiffs' Evidentiary Objections, stating that "At a minimum, the Project would need to be completely redesigned", and that "such a redesign and re-approval process would likely cause delays in Project completion in excess of a year and a half at least" is greatly exaggerated.

29. An enhanced design providing a west-facing elevator and staircase connecting the parking structure to the Hacienda Building, and a network of pedestrian walkways with seating, lighting, signage and landscaping to connect the Hacienda Building to the larger Shopping Center, may minimize the Hacienda Building's isolation and lack of visibility and access. The on-grade parking lot directly in front of the Hacienda Building's restaurant tenant, wine merchant, and bakery can be spanned with outdoor lighting and surrounded by landscaping to create an intimate European-style street scene and fashionable ambiance (like the rest of the shopping center). However, to date, little or no design effort has been made on behalf of the Hacienda Building to create a Common Area environment to encourage pedestrian activity, people-watching, and window shopping connected to the larger Shopping Center.

30. In lieu of the reduction (614 to 445 parking spaces) in overall parking *in close proximity to* the Hacienda Building, I propose a design solution and mitigation measure for the Hacienda Building's lack of near-by parking. The August 8, 2017 Illustrative Site Plan for construction shows 64 on-grade parking spaces directly between the 3-level parking structure and the Hacienda Building. These spaces are most accessible to the Hacienda Building. In addition, there is a vehicle lane that runs directly into the 3-level garage passing these parking spaces. There

may be a relatively simple way to designate these 64 spaces (3.1 per 1,000 sf) for exclusive Hacienda Building use without impacting vehicular access into the parking structure, and the travel lane into the garage may include a walkway to an elevator and stairs.

31. Without a doubt, the site plan dated August 8, 2017, which we believe to be the current plan for construction at the Shopping Center, is materially different from the site plans agreed to by the parties in the Settlement Agreement, dated August 1, 2008. The 2008 site plan shows the Hacienda Building connected with the rest of the Shopping Center via grade level parking, making the Hacienda Building more visible. The 2008 site plan has a literal field of parking holding 227 cars to the northeast of the Hacienda Building, which was created by demolishing Fry's and constructing a mini shopping center with on grade parking accessible to the Hacienda Building. The 2008 site plan shows a 2-level parking structure with 1/2 level below grade in front of the Hacienda Building that is 9 feet 8 inches high to top of railing.

32. The current plan shows a 3-level parking structure at grade level in front of the Hacienda Building, which isolates the Hacienda Building from the rest of the Shopping Center by blocking views. The height of the parking structure is estimated to be 23-24 feet to top of railing (it *was* 9 feet 8 inches). Due to the extra structural load, the entire site may need to be excavated and re-compacted prior to vertical construction. There are no landscaped pedestrian pathways connecting the Hacienda Building to the rest of the Shopping Center. In all the beautiful architectural materials reviewed, I could find no rendering of the upgraded Shopping Center that included a view of the Hacienda Building, which may explain why the Hacienda Building is and will be isolated from the rest of the Shopping Center.

Executed: August 15, 2018

Jeffrey Weinstein, RA