
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-Q

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

For the quarterly period ended March 31, 2013

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

For the transition period from _____ to _____

Commission file number 01-11350

CONSOLIDATED-TOMOKA LAND CO.

(Exact name of registrant as specified in its charter)

Florida
(State or other jurisdiction of
incorporation or organization)

59-0483700
(I.R.S. Employer
Identification No.)

1530 Cornerstone Blvd., Suite 100
Daytona Beach, Florida
(Address of principal executive offices)

32117
(Zip Code)

(386) 274-2202
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "accelerated filer," "smaller reporting company," and "large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class of Common Stock Outstanding
April 29, 2013
\$1.00 par value 5,850,192

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

CONSOLIDATED-TOMOKA LAND CO.
CONSOLIDATED BALANCE SHEETS

	(Unaudited) March 31, 2013	December 31, 2012
ASSETS		
Cash and Cash Equivalents	\$ 1,429,630	\$ 1,301,739
Restricted Cash	888,150	—
Refundable Income Tax	765,225	239,720
Land and Development Costs	27,150,497	27,848,525
Intangible Assets – Net	6,369,095	4,527,426
Assets Held for Sale	—	3,433,500
Other Assets	8,671,630	8,254,399
	<u>45,274,227</u>	<u>45,605,309</u>
Property, Plant, and Equipment:		
Land, Timber, and Subsurface Interests	15,210,501	15,194,901
Golf Buildings, Improvements, and Equipment	2,945,387	2,879,263
Income Properties, Land, Buildings, and Improvements	153,836,295	132,202,887
Other Furnishings and Equipment	912,021	906,441
Total Property, Plant, and Equipment	172,904,204	151,183,492
Less, Accumulated Depreciation and Amortization	(12,379,354)	(12,091,901)
Property, Plant, and Equipment – Net	<u>160,524,850</u>	<u>139,091,591</u>
TOTAL ASSETS	<u>\$205,799,077</u>	<u>\$184,696,900</u>
LIABILITIES		
Accounts Payable	\$ 246,086	\$ 440,541
Accrued Liabilities	6,662,555	6,972,343
Accrued Stock-Based Compensation	414,620	265,311
Pension Liability	1,230,701	1,317,683
Deferred Income Taxes – Net	33,006,809	32,357,505
Notes Payable and Line of Credit	49,148,158	29,126,849
TOTAL LIABILITIES	<u>90,708,929</u>	<u>70,480,232</u>
Commitments and Contingencies		
SHAREHOLDERS' EQUITY		
Common Stock – 25,000,000 shares authorized; \$1 par value, 5,850,192 shares issued and 5,835,558 shares outstanding at March 31, 2013; 5,847,036 shares issued and 5,832,402 shares outstanding at December 31, 2012	5,750,625	5,726,136
Treasury Stock, at cost – 14,634 shares held at March 31, 2013 and December 31, 2012	(453,654)	(453,654)
Additional Paid In Capital	7,450,969	6,939,023
Retained Earnings	103,579,688	103,242,643
Accumulated Other Comprehensive Loss	(1,237,480)	(1,237,480)
TOTAL SHAREHOLDERS' EQUITY	<u>115,090,148</u>	<u>114,216,668</u>
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	<u>\$205,799,077</u>	<u>\$184,696,900</u>

See Accompanying Notes to Consolidated Financial Statements

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CONSOLIDATED-TOMOKA LAND CO.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended	
	March 31, 2013	March 31, 2012
Revenues		
Income Properties	\$ 3,154,668	\$ 2,190,511
Real Estate Operations	338,348	1,065,667
Golf Operations	1,464,685	1,329,579
Other Income	97,677	42,668
Total Revenues	<u>5,055,378</u>	<u>4,628,425</u>
Direct Cost of Revenues		
Income Properties	(229,509)	(144,404)
Real Estate Operations	(121,478)	(164,818)
Golf Operations	(1,407,629)	(1,461,227)
Other Income	(31,369)	(71,558)
Total Direct Cost of Revenues	<u>(1,789,985)</u>	<u>(1,842,007)</u>
General and Administrative Expenses	(1,753,564)	(1,423,648)
Depreciation and Amortization	(772,516)	(537,408)
Gain on Disposition of Assets	—	85,000
Total Operating Expenses	<u>(4,316,065)</u>	<u>(3,718,063)</u>
Operating Income	739,313	910,362
Interest Income	166	—
Interest Expense	(296,668)	(150,229)
Loss on Early Extinguishment of Debt	—	(245,726)
Income from Continuing Operations		
Before Income Tax Expense	442,811	514,407
Income Tax Expense	(165,753)	(196,257)
Income from Continuing Operations	<u>277,058</u>	<u>318,150</u>
Income from Discontinued Operations (Net of Tax)	59,987	176,251
Net Income	<u>\$ 337,045</u>	<u>\$ 494,401</u>
Per Share Information:		
Basic and Diluted		
Income from Continuing Operations	\$ 0.05	\$ 0.06
Income from Discontinued Operations (Net of Tax)	0.01	0.03
Net Income	<u>\$ 0.06</u>	<u>\$ 0.09</u>
Dividends Declared and Paid	<u>\$ —</u>	<u>\$ —</u>

See Accompanying Notes to Consolidated Financial Statements

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CONSOLIDATED-TOMOKA LAND CO.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)

	Three Months Ended	
	March 31, 2013	March 31, 2012
Net Income	\$337,045	\$494,401
Total Other Comprehensive Income, Net of Tax	—	—
Total Comprehensive Income	<u>\$337,045</u>	<u>\$494,401</u>

See Accompanying Notes to Consolidated Financial Statements

CONSOLIDATED-TOMOKA LAND CO.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Unaudited)

	Common Stock	Treasury Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total Shareholders' Equity
Balance December 31, 2012	\$5,726,136	\$(453,654)	\$6,939,023	\$103,242,643	\$(1,237,480)	\$114,216,668
Net Income	—	—	—	337,045	—	337,045
Exercise of Stock Options	5,989	—	171,864	—	—	177,853
Vested Restricted Stock	18,500	—	101,032	—	—	119,532
Stock Compensation Expense from Restricted Stock Grants and Equity Classified Stock Options	—	—	239,050	—	—	239,050
Balance March 31, 2013	<u>\$5,750,625</u>	<u>\$(453,654)</u>	<u>\$7,450,969</u>	<u>\$103,579,688</u>	<u>\$(1,237,480)</u>	<u>\$115,090,148</u>

See Accompanying Notes to Consolidated Financial Statements

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CONSOLIDATED-TOMOKA LAND CO.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Three Months Ended	
	March 31, 2013	March 31, 2012
Cash Flow from Operating Activities:		
Net Income	\$ 337,045	\$ 494,401
Adjustments to Reconcile Net Income to Net Cash Provided By Operating Activities:		
Depreciation and Amortization	778,046	537,808
Gain on Disposition of Property, Plant, and Equipment and Intangible Assets	(54,179)	(85,000)
Loss on Disposition of Assets Held for Sale	26,367	—
Deferred Income Taxes	649,304	14,681
Non-Cash Compensation	444,416	250,025
Decrease (Increase) in Assets:		
Refundable Income Taxes	(424,473)	399,905
Land and Development Costs	(4,799)	(32,772)
Other Assets	(458,094)	(419,541)
Increase (Decrease) in Liabilities:		
Accounts Payable	(194,455)	58,123
Accrued Liabilities and Accrued Stock Based Compensation	291,349	119,860
Income Taxes Payable	—	(704,485)
Net Cash Provided By Operating Activities	<u>1,390,527</u>	<u>633,005</u>
Cash Flow From Investing Activities:		
Acquisition of Property, Plant, and Equipment	(25,709,940)	(9,484)
Acquisition of Intangible Assets	(2,183,538)	—
Increase in Restricted Cash	(888,150)	—
Proceeds from Disposition of Property, Plant, and Equipment, Net	3,935,547	85,000
Proceeds from Disposition of Assets Held for Sale, Net	3,407,133	—
Net Cash Provided By (Used In) Investing Activities	<u>(21,438,948)</u>	<u>75,516</u>
Cash Flow from Financing Activities:		
Proceeds from Notes Payable and Line of Credit	57,700,000	17,115,849
Payments on Notes Payable and Line of Credit	(37,678,691)	(16,155,714)
Cash Proceeds from Exercise of Stock Options	155,003	2,089
Net Cash Provided By Financing Activities	<u>20,176,312</u>	<u>962,224</u>
Net Increase in Cash	127,891	1,670,745
Cash, Beginning of Year	1,301,739	6,174
Cash, End of Period	<u>\$ 1,429,630</u>	<u>\$ 1,676,919</u>

Supplemental Disclosure of Cash Flows:

Income tax refunds totaling \$39,406 and \$227,500 were received in the first three months of 2013 and 2012, respectively.

Interest totaling \$229,169 and \$115,440 was paid in the first three months of 2013 and 2012, respectively.

During March 2013, the Company settled a legal proceeding resulting in a non-cash conveyance of certain acreage in the amount of \$702,827. This non-cash transaction was reflected on the balance sheet as a decrease in land and development costs and accrued liabilities.

See Accompanying Notes to Consolidated Financial Statements

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

NOTE 1. DESCRIPTION OF BUSINESS AND PRINCIPLES OF INTERIM STATEMENTS

Description of Business

The terms “us,” “we,” “our,” and “the Company” as used in this report refer to Consolidated-Tomoka Land Co. (“CTLCo”) together with our consolidated subsidiaries.

We are a diversified real estate operating company. We own and manage commercial real estate properties in seven states in the U.S., and two self-developed properties located in Florida. As of March 31, 2013, we own 36 single-tenant income producing properties, in seven states, with more than 790,000 square feet of gross leasable space. We also own and manage a land portfolio of over 10,000 acres in Florida, a majority of which is located within and forms a substantial portion of the western boundary of the City of Daytona Beach. Our land is well located along both sides of Interstate 95 and near central Florida’s Interstate 4 corridor. We also have a golf course operation, which consists of the LPGA International golf club, lease property for billboards, have agricultural operations, which are managed by a third party and consist of leasing land for hay production, timber harvesting, and hunting leases, and own and manage subsurface oil, gas, and mineral interests. The results of our agricultural and subsurface leasing operations are included in Other Income and Real Estate Operations on our consolidated statement of operations, respectively.

More than 50% of the Company’s income property portfolio and all of the land, golf operations, agriculture operations, and subsurface interests are in the State of Florida.

Interim Financial Information

The accompanying unaudited consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. These unaudited consolidated financial statements do not include all of the information and notes required by accounting principles in the United States of America for complete financial statements and should be read in conjunction with the Company’s Annual Report on Form 10-K for the year ended December 31, 2012, which provides a more complete understanding of the Company’s accounting policies, financial position, operating results, business properties and other matters. The unaudited consolidated financial statements reflect all adjustments which are, in the opinion of management, necessary to present fairly the financial position of the Company and the results of operations for the interim periods.

Certain items in the prior year’s consolidated statement of operations have been reclassified to conform to the presentation of statements of operations for the three months ended March 31, 2013. Specifically, the amounts of depreciation and amortization expense, and interest expense have been segregated into separate line items whereas previously these amounts were included in direct cost of revenues and general and administrative expense, respectively. These reclassifications had no effect on the current year and prior year presentation of income (loss) from continuing operations before taxes.

The results of operations for the first three months ended March 31, 2013 are not necessarily indicative of results to be expected for the year ending December 31, 2013.

NOTE 1. DESCRIPTION OF BUSINESS AND PRINCIPLES OF INTERIM STATEMENTS (continued)

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Any real estate entities or properties included in the consolidated financial statements have been consolidated only for the periods that such entities or properties were owned or under control by us. All significant inter-company balances and transactions have been eliminated in the consolidated financial statements.

Use of Estimates in Preparation of Financial Statements

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Because of the adverse market conditions that currently exist in the Florida and national real estate markets, and financial and credit markets, it is possible that the estimates and assumptions, most notably with the Company's investment in income properties and its pension liability, could change materially during the time span associated with the continued weakened state of the real estate and financial markets.

Fair Value of Financial Instruments

The largest carrying amounts of the Company's financial assets and liabilities, including cash and cash equivalents, restricted cash, accounts receivable, and accounts payable at March 31, 2013 and December 31, 2012, approximate fair value because of the short maturity of these instruments. The carrying amount of the Company's notes payable approximates fair value at March 31, 2013 and December 31, 2012, since the notes are at floating rates or fixed rates, which approximate current market rates for notes with similar risks and maturities.

Intangible Assets

As of March 31, 2013, the in-place lease value totaled \$6,369,095, net of accumulated amortization of \$2,934,139. At December 31, 2012 the in-place lease value totaled \$4,527,426, net of accumulated amortization of \$3,443,102. Amortization expense for the three months ended March 31, 2013 and 2012 was \$167,509 and \$97,407, respectively.

NOTE 2. DISCONTINUED OPERATIONS

In May 2012, we sold our income property in Asheville, North Carolina, which was leased to Northern Tool and Equipment, for \$3.925 million. We also sold our income property in Powder Springs, Georgia, which was leased to Walgreen Co., for \$4.09 million. A gain of \$78,455 was recognized on the sale of the two properties in the quarter ended June 30, 2012. Discontinued operations for the three months ended March 31, 2012, includes the operating results of these two income properties that were sold in the quarter ended June 30, 2012.

In the fourth quarter of 2012, one income property, the PNC Bank in Alpharetta, Georgia, was classified as held for sale as we had commenced an active program to market and sell the property and determined there was a high probability that a sales transaction would occur within one year. A property classified as held for sale is carried at the lower of carrying cost or estimated fair value, less estimated cost to sell, and is reported as discontinued operations with its respective results of operations classified as income from discontinued operations on our consolidated statements of operations. In accordance with FAS ASC 360, depreciation was discontinued once the property was classified as held for sale.

On February 14, 2013, the Company sold its interest in the 4,128 square-foot building under lease to PNC Bank, located in Alpharetta, Georgia. The sales price on this transaction amounted to \$3,550,000. The property was presented as assets held for sale on the consolidated balance sheet at December 31, 2012; and as of December 31, 2012, the value was written down to reflect the contractual sales price resulting in a loss of \$426,794. The property's operating results were included in discontinued operations for each of the three month periods ended March 31, 2013 and 2012.

On February 21, 2013, the Company sold its interest in the 13,824 square-foot building under lease to CVS, located in Clermont, Florida. The sales price on this transaction amounted to \$4,050,000. As of December 31, 2012, no contract was in place, therefore, this property was not presented as assets held for sale on the balance sheet at December 31, 2012. Upon the sale in February 2013, the property's operating results were included in discontinued operations for each of the three month periods ended March 31, 2013 and 2012.

Following is a summary of income from discontinued operations for the periods:

	Three Months Ended	
	March 31, 2013	March 31, 2012
Leasing Revenue and Other Income	\$ 75,377	\$ 307,300
Costs and Other Expenses	(5,530)	(20,363)
Income from Operations	69,847	286,937
Gain on Sale of Property	27,812	—
Income before Income Tax Expense	97,659	286,937
Income Tax Expense	(37,672)	(110,686)
Income from Discontinued Operations	<u>\$ 59,987</u>	<u>\$ 176,251</u>

NOTE 3. COMMON STOCK AND EARNINGS PER SHARE

Basic earnings per common share is computed by dividing net income by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per common share is based on the assumption of the conversion of stock options at the beginning of each period using the treasury stock method at average cost for the periods.

	Three Months Ended	
	March 31, 2013	March 31, 2012
Income Available to Common Shareholders:		
Income from Continuing Operations	\$ 277,058	\$ 318,150
Discontinued Operations	59,987	176,251
Net Income	<u>\$ 337,045</u>	<u>\$ 494,401</u>
Weighted Average Shares Outstanding	5,717,139	5,725,086
Common Shares Applicable to Stock		
Options Using the Treasury Stock Method	—	—
Total Shares Applicable to Diluted Earnings Per Share	<u>5,717,139</u>	<u>5,725,086</u>
Basic and Diluted Per Share Information:		
Income from Continuing Operations	\$ 0.05	\$ 0.06
Discontinued Operations	0.01	0.03
Net Income	<u>\$ 0.06</u>	<u>\$ 0.09</u>

The effect of 32,480 and 139,151 potentially dilutive securities were not included for the three months ended March 31, 2013 and 2012, respectively, as the effect would be antidilutive.

NOTE 4. PENSION PLAN

The Company maintains a Defined Benefit Pension Plan (the “Pension Plan”) for all employees who have attained the age of 21 and completed one year of service. The pension benefits are based primarily on years of service and the average compensation for the five highest consecutive years during the final ten years of employment. The benefit formula generally provides for a life annuity benefit.

Effective December 31, 2011, the Company amended its Pension Plan to freeze participants’ benefits with no future accruals after that date. Any current or future employee who was not a participant of the Pension Plan on December 31, 2011 will not be eligible to enter the Pension Plan. Although the Pension Plan will remain active with no new entrants and no future accruals, the Company’s contribution level is expected to be reduced over time. In January 2013, the Company made a cash contribution to the Pension Plan of \$84,600, related to the 2012 Pension Plan year. There are no quarterly contribution requirements for 2013.

NOTE 5. NOTES PAYABLE AND LINE OF CREDIT

On February 27, 2012, the Company entered into a Credit Agreement (the “Agreement”) with Bank of Montreal (“BMO”) as Administrative Agent, Letter of Credit Issuer, and a Lender. The Agreement consisted of a \$46.0 million revolving credit facility with a maturity date of February 27, 2015 (the “Credit Facility”). The indebtedness outstanding under the Agreement accrued interest, prior to the amendments of the Agreement, at a rate ranging from the 30-day London Interbank Offer Rate (“LIBOR”) plus 175 basis points to LIBOR plus 250 basis points based on the total balance outstanding under the Credit Facility as a percentage of total asset value of the Company. The Credit Facility is unsecured and is guaranteed by certain subsidiaries of the Company.

The Credit Facility replaced the \$25.0 million revolving credit facility with SunTrust Bank, which had a maturity date of June 27, 2014. Approximately \$9.7 million of the initial disbursement of the Credit Facility was used to pay off the outstanding balance of the existing credit facility with SunTrust Bank and approximately \$5.6 million was used to pay off the term loan with SunTrust Bank, which had a maturity date of July 1, 2012. The indebtedness under the prior SunTrust revolving credit facility and term loan were secured by certain assets of the Company. The Company wrote off \$245,726 of deferred loan costs in the first quarter of 2012 as a result of this early extinguishment of debt.

The Agreement contains restrictive covenants, customary for this type of transaction, including, but not limited to, limitations on the Company’s ability to: (a) incur indebtedness; (b) make certain investments; (c) incur certain liens; (d) engage in certain affiliate transactions; and (e) engage in certain major transactions such as mergers. In addition, the Company is subject to various financial maintenance covenants, including, but not limited to, a maximum indebtedness ratio, a maximum secured indebtedness ratio, and a minimum fixed charge coverage ratio. The Agreement also contains affirmative covenants and events of default, including, but not limited to, a cross default to the Company’s other indebtedness and the occurrence of a change of control. The Company’s failure to comply with these covenants or the occurrence of an event of default could result in acceleration of the Company’s debt and other financial obligations under the Agreement.

In September 2012, the Company entered into the First Amendment to the Credit Agreement (“Amendment”) and added a second participating lender to the Agreement. This Amendment, under the accordion feature, expanded the credit facility to \$62.0 million. The Amendment also modified some of the restrictive covenants contained in the original Agreement. These changes to the restrictive covenants are not considered material in nature. On February 14, 2013, the Company added a third participant lender to the Agreement and pursuant to the accordion feature, the Credit Facility was expanded to \$66.0 million.

On March 29, 2013, the Company entered into the second amendment to the Credit Agreement (“Second Amendment”). The Second Amendment, expands the accordion feature allowing the Company to increase the facility up to \$125 million and reduces the interest rate by 25 basis points, which now ranges from LIBOR plus 150 basis points up to LIBOR plus 225 basis points, based on the Company’s debt level. The Second Amendment also extends the maturity date to March 31, 2016 from February 27, 2015, and reduces the limitations on the Company’s ability to make certain investments.

NOTE 5. NOTES PAYABLE AND LINE OF CREDIT (continued)

On February 22, 2013, the Company closed on a \$7.3 million loan with UBS Real Estate Securities Inc., secured by its interest in the two-building office complex leased to Hilton Resorts Corporation which was acquired on January 31, 2013. The new mortgage loan matures in February 2018, carries a fixed rate of interest of 3.655% per annum, and requires payments of interest only prior to maturity. The proceeds from the borrowing were used to pay-down a portion of the Company's outstanding balance on its revolving credit facility.

On March 8, 2013, the Company closed on a \$23.1 million loan with Bank of America, N.A., secured by its interest in fourteen income properties. The new mortgage loan matures in April 2023, carries a fixed rate of 3.67% per annum, and requires payments of interest only prior to maturity. The net proceeds from the borrowing were used to pay-down a portion of the Company's outstanding balance on its revolving credit facility.

Notes payable and line of credit consist of the following:

	March 31, 2013	
	Total	Due Within One Year
\$66 Million Credit Facility	\$ 18,748,158	\$ —
UBS Note Payable	7,300,000	—
BOA Note Payable	23,100,000	—
	<u>\$49,148,158</u>	<u>\$ —</u>

Payments applicable to reduction of principal amounts will be required as follows:

Year Ending December 31,	Amount
2013	\$ —
2014	—
2015	—
2016	18,748,158
2017 and Thereafter	30,400,000
	<u>\$49,148,158</u>

At March 31, 2013, there was approximately \$47.3 million of available borrowing capacity on the existing \$66.0 million credit facility, subject to the borrowing base requirements.

For the first three months of 2013, interest expense was \$296,668 with \$299,169 paid during the period. For the first three months of 2012, interest expense was \$150,229 with \$115,440 paid during the period. No interest was capitalized during the first three months of 2013 or 2012.

The Company is in compliance with all of its debt covenants as of March 31, 2013 and December 31, 2012.

NOTE 6. STOCK-BASED COMPENSATION**EQUITY-CLASSIFIED STOCK COMPENSATION*****Market Condition Restricted Shares***

Under the 2010 Equity Incentive Plan (the "2010 Plan"), the Company granted to certain employees non-vested restricted stock which vest upon the achievement of certain market conditions, including the Company's total shareholder return as compared to the total shareholder return of a certain peer group during a five-year performance period.

The Company used a Monte Carlo simulation pricing model to determine the fair value of its market condition based awards. The determination of the fair value of market condition-based awards is affected by the stock price as well as assumptions regarding a number of other variables. These variables include expected stock price volatility over the requisite performance term of awards, the relative performance of the Company's stock price, and shareholder returns to those companies in its peer group, annual dividends, and a risk-free interest rate assumption. Compensation cost is recognized regardless of the achievement of the market conditions, provided the requisite service period is met.

A summary of activity during the three months ended March 31, 2013, is presented below:

<u>Market Condition Non-Vested Restricted Shares</u>	<u>Shares</u>	<u>Wgt. Avg. Grant Date Fair Value</u>
Outstanding at December 31, 2012	7,900	\$ 23.13
Granted	—	—
Vested	—	—
Forfeited	(2,833)	23.13
Outstanding at March 31, 2013	<u>5,067</u>	<u>\$ 23.13</u>

As of March 31, 2013, there was \$61,917 of unrecognized compensation cost, adjusted for estimated forfeitures, related to market condition non-vested restricted shares, which will be recognized over a weighted average period of 2.6 years.

Non-Qualified Stock Option Awards

Pursuant to the Non-Qualified Stock Option Award Agreements between the Company and Mr. Albright and Mr. Patten, Mr. Albright and Mr. Patten were granted options to purchase 50,000 and 10,000 shares of Company common stock, respectively, under the 2010 Plan with an exercise price per share equal to the fair market value on their respective grant dates of August 1, 2011 and April 16, 2012. One-third of the options will vest on each of the first, second, and third anniversaries of their respective grant dates, provided they are an employee of the Company on those dates. In addition, any unvested portion of the options will vest upon a change in control. The options expire on the earliest of: (a) the tenth anniversary of the grant date; (b) twelve months after the employee's death or termination for disability; or (c) thirty days after the termination of employment for any reason other than death or disability.

On January 23, 2013 the Company granted options to purchase 51,000 shares of the Company's common stock under the 2010 Plan to certain employees of the Company, including 10,000 shares to Mr. Patten, with an exercise price of \$34.95 per share, which was equal to the fair market value at the date of grant. One-third of these options will vest on each of the first, second, and third anniversaries of the grant date, provided the recipient is an employee of the Company on those dates. Any unvested portion of the options will vest upon a change in control. The options expire on the earliest of: (a) the fifth anniversary of the grant date; (b) twelve months after the employee's death or termination for disability; or (c) thirty days after the termination of employment for any reason other than death or disability.

[Table of Contents](#)**NOTE 6. STOCK-BASED COMPENSATION (continued)**

A summary of the activity for both awards during the three months ended March 31, 2013, is presented below:

	Shares	Wtd. Avg. Ex. Price	Wtd. Avg. Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2012	60,000	\$ 28.97		
Granted	51,000	34.95		
Exercised	(5,000)	28.90		
Expired	—	—		
Outstanding at March 31, 2013	106,000	\$ 31.85	6.71	\$784,150
Exercisable at March 31, 2013	11,667	\$ 28.90	8.33	\$120,753

The weighted-average grant-date fair value of options granted during the three months ended March 31, 2013 was \$6.58. The total intrinsic value of options exercised during the three months ended March 31, 2013 was \$44,950. As of March 31, 2013, there was \$580,744 of unrecognized compensation related to non-qualified, non-vested stock option awards, which will be recognized over a period of 2.2 years.

Market Condition Inducement Grant of Restricted Shares

“Inducement” grants of 96,000 and 17,000 restricted shares of the Company’s common stock were awarded to Mr. Albright and Mr. Patten on August 1, 2011 and April 16, 2012, respectively. Mr. Albright’s restricted shares were granted outside of the 2010 Plan while Mr. Patten’s restricted shares were awarded under the 2010 Plan. The Company filed a registration statement with the Securities and Exchange Commission on Form S-8 to register the resale of Mr. Albright’s restricted stock award. The restricted shares will vest in six increments based upon the price per share of the Company’s common stock during the term of their employment (or within sixty days after termination of employment by the Company without cause), meeting or exceeding the target trailing sixty-day average closing prices ranging from \$36.00 per share for the first increment to \$65.00 per share for the final increment. If any increment of the restricted shares fails to satisfy the applicable stock price condition prior to six years from the grant date, that increment of the restricted shares will be forfeited.

During the three months ended March 31, 2013, the closing price per share of the Company’s common stock on a sixty-day trading average reached \$36.00, and as a result, 16,000 shares and 2,500 shares vested for Mr. Albright and Mr. Patten, respectively.

A summary of the activity for both awards during the three months ended March 31, 2013, is presented below:

	Shares	Wtd. Avg. Fair Value
Outstanding at December 31, 2012	113,000	\$ 18.40
Granted	—	—
Vested	(18,500)	23.89
Forfeited	—	—
Outstanding at March 31, 2013	94,500	\$ 17.33

As of March 31, 2013, there was \$504,155 of unrecognized compensation cost, adjusted for estimated forfeitures, related to market condition non-vested restricted shares, which will be recognized over a weighted average period of 0.8 years.

NOTE 6. STOCK-BASED COMPENSATION (continued)

LIABILITY-CLASSIFIED STOCK COMPENSATION

The Company previously had a stock option plan (the “2001 Plan”) pursuant to which 500,000 shares of the Company’s common stock could be issued. The 2001 Plan expired in 2010, and no new stock options may be issued under the 2001 Plan. Under the 2001 Plan, both stock options and stock appreciation rights were issued in prior years and such issuances were deemed to be liability-classified awards under the Share-Based Payment Topic of FASB ASC.

A summary of share option activity under the 2001 Plan for the three months ended March 31, 2013 is presented below:

Stock Options

	<u>Shares</u>	<u>Wtd. Avg. Ex. Price</u>	<u>Wtd. Avg. Remaining Contractual Term (Years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding at December 31, 2012	80,800	\$ 52.43		
Granted	—	—		
Exercised	(2,000)	20.12		
Expired	(13,000)	67.41		
Outstanding at March 31, 2013	<u>65,800</u>	<u>\$ 50.45</u>	<u>4.12</u>	<u>\$ 155,894</u>
Exercisable at March 31, 2013	<u>65,800</u>	<u>\$ 50.45</u>	<u>4.12</u>	<u>\$ 155,894</u>

In connection with the grant of non-qualified stock options, a stock appreciation right for each share covered by the option was also granted. The stock appreciation right entitles the optionee to receive a supplemental payment, which may be paid in whole or in part in cash or in shares of common stock, equal to a portion of the spread between the exercise price and the fair market value of the underlying shares at the time of exercise. The total intrinsic value of options exercised during the three months ended March 31, 2013 was \$28,544.

Stock Appreciation Rights

	<u>Shares</u>	<u>Wtd. Avg. Fair Value</u>	<u>Wtd. Avg. Remaining Contractual Term (Years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding at December 31, 2012	80,800	\$ 1.12		
Granted	—	—		
Exercised	(2,000)	5.86		
Expired	(13,000)	0.09		
Outstanding at March 31, 2013	<u>65,800</u>	<u>\$ 2.23</u>	<u>4.12</u>	<u>\$ 83,943</u>
Exercisable at March 31, 2013	<u>65,800</u>	<u>\$ 2.23</u>	<u>4.12</u>	<u>\$ 83,943</u>

The total intrinsic value of stock appreciation rights exercised during the three months ended March 31, 2013 was \$15,370.

The fair value of each share option and stock appreciation right is estimated on the measurement date using the Black-Scholes option pricing model based on assumptions noted in the following table. Expected volatility is based on the historical volatility of the Company and other factors. The Company has elected to use the simplified method of estimating the expected term of the options and stock appreciation rights. Due to the small number of employees included in the 2001 Plan, the Company uses the specific identification method to estimate forfeitures and includes all participants in one group. The risk-free rate for periods within the contractual term of the share option is based on the U.S. Treasury rates in effect at the time of measurement. The Company issues new, previously unissued, shares as options are exercised.

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NOTE 6. STOCK-BASED COMPENSATION (continued)

Following are assumptions used in determining the fair value of stock options and stock appreciation rights:

<u>Assumptions at:</u>	<u>March 31,</u> <u>2013</u>	<u>December 31,</u> <u>2012</u>
Expected Volatility	25.08%	24.34%
Expected Dividends	0.10%	0.13%
Expected Term	2 years	3 years
Risk-Free Rate	0.40%	0.39%

There were no stock options or stock appreciation rights granted under the 2001 Plan in the three months ended March 31, 2013 or year ended December 31, 2012.

The liability for stock options and stock appreciation rights, valued at fair value, reflected on the consolidated balance sheets at March 31, 2013 and December 31, 2012 was \$414,620 and \$265,311, respectively. These fair value measurements are based on quoted prices in active markets (Level 1 Inputs).

Amounts recognized in the consolidated financial statements for stock options, stock appreciation rights, and restricted stock are as follows:

	<u>Three Months Ended</u>	
	<u>March 31,</u> <u>2013</u>	<u>March 31,</u> <u>2012</u>
Total Cost of Share-Based Plans Charged Against		
Income Before Tax Effect	<u>\$ 444,416</u>	<u>\$ 250,025</u>
Income Tax Expense		
Recognized in Income	<u>\$(171,433)</u>	<u>\$(96,477)</u>

NOTE 7. ACCRUED LIABILITIES

Accrued liabilities consist of the following:

	As of	
	March 31, 2013	December 31, 2012
Golf Course Lease	\$3,612,131	\$3,702,194
Deferred Compensation	664,190	828,998
Accrued Property Taxes	205,151	—
Deferred Lease and Other Income	866,255	970,802
Other Post-Retirement Benefits	177,733	186,695
Legal Reserves	—	723,058
Reserve for Tenant Improvement	773,000	—
Other	364,095	560,596
	<u>\$6,662,555</u>	<u>\$6,972,343</u>

In July 2012, the Company entered into an agreement with the City of Daytona Beach, Florida (the "City") to, among other things, amend the lease payments under its golf course lease (the "Lease Amendment") whereby the base rent payment, which was scheduled to increase from \$250,000 to \$500,000 as of September 1, 2012, for the remainder of the lease term and any extensions would remain at \$250,000 subject to an annual rate increase of 1.75% beginning September 1, 2013. Under the Lease Amendment, the Company agreed to invest \$200,000 prior to September 1, 2015 for certain improvements to the facilities. In addition, pursuant to the Lease Amendment, beginning September 1, 2012, and continuing throughout the initial lease term and any extension option, the Company will pay additional rent to the City equal to 5.0% of gross revenues (as defined in the Lease Amendment) exceeding \$5,500,000 and 7.0% of gross revenues (as defined in the Lease Amendment) exceeding \$6,500,000. Since the inception of the lease, the Company has been recognizing the rent expense on a straight-line basis resulting in an estimated accrual for deferred rent. Upon the effective date of the amendment to the lease, the Company's straight-line rent was revised to reflect the lower rent levels through expiration of the lease. As a result, approximately \$3.0 million of the rent previously deferred will not be due to the landlord, and will be recognized into income over the remaining lease term, which expires in 2022.

In connection with the acquisition of the two properties leased to Hilton Resorts Corporation on January 31, 2013, the Company was credited \$773,000 at closing for certain required tenant improvements. The accrued liability will be relieved upon satisfactory completion of the improvements which were in progress as of March 31, 2013. In connection with the closing of the UBS Note Payable described in Note 5, loan proceeds sufficient to fund the improvements were reserved and are included in restricted cash as of March 31, 2013.

NOTE 8. INCOME TAXES

The effective income tax rate for the three month periods ended March 31, 2013, and 2012, including income taxes attributable to the discontinued operations, was 37.6% and 38.3%, respectively. The provision for income taxes reflects the Company's estimate of the effective rate expected to be applicable for the full fiscal year, adjusted for any discrete events, which are reported in the period that they occur. The net deferred income tax liability as of March 31, 2013 was impacted primarily by the recognition of approximately \$442,653 of previously unrecognized tax benefits. The Company and its subsidiaries file consolidated income tax returns in the United States Federal jurisdiction and in several states. The Internal Revenue Service has audited the Company's consolidated federal tax returns through the year 2006, with all proposed adjustments settled.

NOTE 9. COMMITMENTS AND CONTINGENCIES

From time to time, the Company may be a party to certain legal proceedings, incidental to the normal course of its business. While the outcome of the legal proceedings cannot be predicted with certainty, the Company does not expect that these proceedings will have a material effect upon our financial condition or results of operations.

In September 2010, St. Johns River Water Management District (the “District”) served the Company with an administrative complaint filed with the Florida Division of Administrative Hearings in connection with certain Company agricultural operations. In August 2012 the Company submitted a proposed settlement offer to the District, offering certain undeveloped acreage owned by the Company. The Company accrued a reserve equal to \$611,691 in the quarter ended September 30, 2012, reflecting the Company’s carrying value of the acreage offered to settle the matter. In December 2012, the Company and the District executed a settlement agreement (“SJRWMD Agreement”) in which the Company agreed to submit an after-the-fact permit application and increased the undeveloped acreage offered for mitigation in connection with the permit. The Company adjusted the reserve to a total of \$723,058 to reflect the increased acreage offered in the SJRWMD Agreement. The SJRWMD Agreement was contingent upon the Company and the District reaching agreement on a management fee and issuance of the permit. The Company submitted its permit application on January 28, 2013. In March 2013 the Company conveyed the acreage contemplated by the SJRWMD Agreement, the District issued the after-the-fact permit and the litigation was settled.

On November 21, 2011, the Company, Indigo Mallard Creek LLC and Indigo Development LLC, as owners of the property leased to Harris Teeter, Inc. (“Harris Teeter”) in Charlotte, North Carolina, were served with pleadings filed in the General Court of Justice, Superior Court Division for Mecklenburg County, North Carolina, for a highway condemnation action involving the property. The proposed road modifications would impact access to the Company’s property that is leased to Harris Teeter. The Company does not believe the road modifications provide a basis for Harris Teeter to terminate the Lease. In May 2012, the North Carolina Department of Transportation (“NCDOT”) indicated that while it had not reached a final decision on its consideration of this matter, the intersection would remain all-access. On November 6, 2012, the Company filed its response to the condemnation pleadings. The trial in this matter has been initially scheduled for the week of September 16, 2013, with mediation to occur prior to July 22, 2013. In January 30, 2013, NCDOT proposed to redesign the road modifications to keep the all access intersection open for ingress with no change to the planned limitation on egress to the right-in/right-out only. Additionally, NCDOT and the City of Charlotte (“Charlotte”) proposed to build and maintain a new access road/point into the property. These proposals are tentative and any proposed action by NCDOT and Charlotte would require NCDOT and Charlotte to obtain additional public funding.

In May 2010, the Company filed a lawsuit in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, in order to enforce its approximate \$3.8 million claim of lien on real property owned by FM Bayberry Cove Holding, LLC (“FM Bayberry”) for its share of the costs for construction of a road. BB&T was included as a defendant as the current mortgage holder of the property subject to the Company’s lien. BB&T filed a counterclaim asserting that its mortgage is superior to the Company’s claim of lien which the Company denied. BB&T and the Company each filed motions for summary judgment as to the priority of their respective interests in the property which were heard by the court on January 12, 2012. The Circuit Court determined that the Company’s interests were superior to the lien imposed by BB&T and all other interests. The Company subsequently filed a motion for summary judgment of foreclosure, which was granted and the Final Judgment of Foreclosure was entered in August 2012. However, all further proceedings in the Circuit Court (including the foreclosure sale) are stayed pending BB&T’s appeal to the Florida District Court of Appeal, Fifth District regarding the Circuit Court’s determination in the matter of priority. In December 2012, the Company and BB&T attended an appellate court-ordered mediation. The mediation was terminated on or about January 10, 2013, when the parties were unable to reach agreement. This matter is continuing in the appeal at this time with BB&T’s initial brief due to be filed on or about May 1, 2013. As of March 31, 2013, the amount of the judgment plus interest is in excess of \$4.4 million.

NOTE 10. TREASURY STOCK

On April 26, 2012, the Company announced a voluntary Odd-Lot Buy-Back Program (the “Program”), whereby the Company offered to purchase shares from shareholders who owned less than 100 shares of the Company’s common stock as of April 26, 2012, for \$31.00 per share. The Program reflected the Company’s interest in reducing the ongoing costs associated with shareholder recordkeeping and communications and to assist shareholders who may be deterred from selling their small lots of stock due to the costs that would be incurred. The Company paid all costs associated with the Program and purchased 14,634 shares under the Program at a total cost of \$453,654. The Program expired June 30, 2012. The Company did not provide any recommendation regarding shareholder participation and the decision was entirely that of each shareholder as to whether to sell shares in this Program.

NOTE 11. BUSINESS SEGMENT DATA

The Company primarily operates in three business segments: income properties, real estate operations, and golf operations. Our income property operations consist primarily of income producing properties and our business plan is focused on investing in additional income producing properties. Our income property operations accounted for 73.4% and 70.8% of our identifiable assets and 62.4% and 47.3% of our consolidated revenues as of and for the three months ended March 31, 2013 and year ended December 31, 2012, respectively. Our real estate operations primarily consist of revenues generated from land transactions and leasing and royalty income from our interests in subsurface oil, gas and mineral rights. Our golf operations consist of a single property located in the City, with two 18-hole championship golf courses, a practice facility, and clubhouse facilities, including a restaurant and bar operation. The majority of the revenues generated by the golf operation are derived from members and public customers playing golf, club memberships, and food and beverage operations.

The Company evaluates performance based on profit or loss from operations before income taxes. The Company's reportable segments are strategic business units that offer different products. They are managed separately because each segment requires different management techniques, knowledge, and skills.

Information about the Company's operations in the different segments for the three months ended March 31, 2013 and 2012 is as follows:

	Three Months Ended	
	March 31, 2013	March 31, 2012
Revenues:		
Income Properties	\$ 3,154,668	\$ 2,190,511
Real Estate Operations	338,348	1,065,667
Golf Operations	1,464,685	1,329,579
Other Income	97,677	42,668
	<u>\$ 5,055,378</u>	<u>\$ 4,628,425</u>
Operating Income:		
Income Properties	\$ 2,925,159	\$ 2,046,107
Real Estate Operations	216,870	900,849
Golf Operations	57,056	(131,648)
Other Income	66,308	(28,890)
General and Corporate Expense	(2,526,080)	(1,876,056)
	<u>\$ 739,313</u>	<u>\$ 910,362</u>
Depreciation and Amortization:		
Income Properties	\$ 672,290	\$ 460,551
Real Estate Operations	173	173
Golf Operations	49,675	43,763
Other	50,378	32,921
	<u>\$ 772,516</u>	<u>\$ 537,408</u>
Capital Expenditures:		
Income Properties	\$27,806,176	\$ —
Real Estate Operations	—	—
Golf Operations	66,123	—
Other	21,179	9,484
	<u>\$27,893,478</u>	<u>\$ 9,484</u>

NOTE 11. BUSINESS SEGMENT DATA (continued)

	As of	
	March 31, 2013	December 31, 2012
Identifiable Assets:		
Income Properties	\$151,042,040	\$130,726,326
Real Estate	33,402,814	34,161,944
Golf	3,232,200	3,230,225
Other	18,122,023	16,578,405
	<u>\$205,799,077</u>	<u>\$184,696,900</u>

Operating income represents income from continuing operations before loss on early extinguishment of debt, interest expense, interest income, and income taxes. General and corporate expenses are an aggregate of general and administrative expenses, impairment charges, depreciation and amortization expense, and gains (losses) on the disposition of assets. Identifiable assets by segment are those assets that are used in the Company's operations in each segment. Other assets consist primarily of cash, property, plant, and equipment related to the other operations as well as the general and corporate operations. There were no transactions between segments for any of the periods presented. Certain items in the prior years' consolidated statement of operations have been reclassified to conform to the presentation of the consolidated statements of operations for the three months ended March 31, 2013 and year ended December 31, 2012. Specifically, the depreciation and amortization expense and interest expense have been segregated into separate line items, whereas previously, these amounts were included in direct cost of revenues and general and administrative expenses, respectively. These reclassifications had no effect on the prior year presentation of income from continuing operations before income tax.

NOTE 12. RECENTLY ISSUED ACCOUNTING POLICIES

On January 1, 2012, the Company adopted Financial Accounting Standards Board ("FASB") changes related to fair value measurement and disclosure. The changes are the result of convergence with International Financial Reporting Standards and clarify certain fair value measurement concepts and expand on existing disclosure requirements on Level 3 fair value measurements. The adoption of these changes did not have a material impact on the Company's consolidated financial statements.

On January 1, 2012, the Company adopted FASB changes related to the presentation of comprehensive income. The changes remove certain presentation options and require entities to report components of comprehensive income in either a continuous statement of comprehensive income or two separate but consecutive statements. There were no changes to the items that are reported in other comprehensive income. In December 2011, the FASB indefinitely deferred a requirement dealing with the presentation of reclassification adjustments out of accumulated other comprehensive income. Other than the sequencing of financial statements, the adoption of these changes did not have an impact on the Company's consolidated financial statements.

On January 1, 2013 the Company adopted FASB changes related to offsetting assets and liabilities. The changes require additional disclosure information regarding offsetting assets and liabilities to enable users of financial statements to understand the effect on financial position. The adoption of these changes did not have a material impact on the Company's consolidated financial statements.

On January 1, 2013, the Company adopted FASB ASU 2013-2, Reporting of Amounts Reclassified Out of Accumulated Other Comprehensive Income. This guidance requires an organization to present the effects on the line items of net income of significant amounts reclassified out of accumulated other comprehensive income, but only if the item reclassified is required under U.S. generally accepted accounting principles to be reclassified to net income in its entirety in the same reporting period. The adoption of these changes did not have a material impact on the Company's consolidated financial statements.

NOTE 13. RECENT ACQUISITIONS OF INCOME PROPERTIES

During the three months ended March 31, 2013, the Company acquired seven income properties at a total acquisition cost of approximately \$27.8 million. Of the total acquisition cost, approximately \$9.4 million was allocated to land, approximately \$16.2 million was allocated to buildings and improvements, and approximately \$2.2 million was allocated to intangible assets pertaining to the in-place lease value. The weighted average amortization period for the \$2.2 million allocated to intangible assets is approximately 10.1 years.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward-Looking Statements

When the Company uses any of the words "anticipate," "assume," "believe," "estimate," "expect," "intend," or similar expressions, the Company is making forward-looking statements. Although management believes that the expectations reflected in such forward-looking statements are based upon present expectations and reasonable assumptions, the Company's actual results could differ materially from those set forth in the forward-looking statements. Certain factors that could cause actual results or events to differ materially from those the Company anticipates or projects are described in "Item 1A. Risk Factors" of the Company's Annual Report on Form 10-K, for year ended December 31, 2012. Given these uncertainties, readers are cautioned not to place undue reliance on such statements, which speak only as of the date of this Quarterly Report on Form 10-Q or any document incorporated herein by reference. The Company undertakes no obligation to publicly release any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q, or the aforementioned risk factors.

OVERVIEW

We are a diversified real estate operating company. We own and manage commercial real estate properties in seven states in the U.S., with two self-developed multi-tenant properties located in Florida. We also own and manage a land portfolio, of over 10,000 acres in Florida, of which a majority is located within and forms a substantial portion of the western boundary of the City of Daytona Beach. Our land is well-located along both sides of Interstate 95 and near central Florida's Interstate 4 corridor. We also have a golf course operation, which consists of the LPGA International golf club, lease property for billboards, have agricultural operations, which are managed by a third party and consist of leasing land for hay production, timber harvesting, and hunting leases, and own and manage subsurface oil, gas, and mineral interests. The results of our agricultural and subsurface leasing operations are included in other income and real estate operations, respectively on our consolidated statement of operations.

Income Property Operations. We have pursued a strategy of investing in income producing properties, by utilizing, when possible, the proceeds from real estate transactions qualifying for income tax deferral through like-kind exchange treatment for tax purposes. Through March 31, 2013, we had invested approximately \$175.8 million in forty-one single-tenant income properties primarily through this tax-deferred structure. We have sold five of these income properties, with two sold in February 2013, for \$7.6 million, and three sold in prior years, for a total of \$10.7 million. During the three months ended March 31, 2013, we acquired the following seven income properties at a total purchase price of approximately \$27.6 million:

- On January 3, 2013, the Company acquired four properties leased to Bank of America, N.A. in both Los Angeles County and Orange County, California at an aggregate purchase price of \$8,015,737. The initial terms of the leases are 15 years.
- On January 23, 2013, the Company acquired a 34,512 square-foot free-standing building situated on 3.62 acres in Glendale, Arizona. The property is under lease to Big Lots with an initial term of 10 years. The purchase price totaled \$5,001,500.
- On January 31, 2013, the Company acquired a two-building 133,000 square-foot office complex leased to Hilton Resorts Corporation in Orlando, Florida. The total purchase price was \$14.6 million. Both buildings are under a long term lease, with over eight years remaining in the term, which provides for annual lease escalations.

Our current portfolio of income properties generates approximately \$11.6 million of revenues from lease payments on an annualized basis and has an average remaining lease term of 10.4 years as of March 31, 2013.

We expect to continue to focus on acquiring additional income-producing properties during fiscal 2013, and in the near term thereafter, maintaining our use of the aforementioned tax deferral structure whenever possible.

As of March 31, 2013, the Company owned two retail banking sites in Florida, originally leased by RBC Centura Bank ("RBC"). In March 2012, RBC's U.S. retail banking unit merged with PNC Bank. The Company does not expect the merger to have an adverse impact on the leases for these properties. During the fourth quarter of 2009, RBC closed the branch at one of the retail banking sites owned by the Company, located in Altamonte Springs, Florida. The tenant remains obligated on the lease for the remaining term of the lease and the scheduled lease payments have continued to be collected.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (continued)

As part of our overall strategy for investing in income-producing investments, we have self-developed two properties in Daytona Beach, Florida. The first property is a two-building, 31,000 square-foot flex office space complex located within the Mason Commerce Center. The two buildings represent the first phase of a four-building planned commercial development. The second phase would allow for an identical two-building project to be built. As of March 31, 2013, the occupancy of the completed two-building complex is 94%. The second self-developed property is the first phase of a twelve-acre, four-lot commercial complex located at the northeast corner of LPGA and Williamson Boulevards in Daytona Beach, Florida. The parcel includes a 22,000 square-foot, two-story office building known as the Concierge Office Building. As of March 31, 2013, approximately 74.3% of the building was leased to two tenants.

Our focus on acquiring income-producing investments includes a continual review of our existing income property portfolio to identify opportunities to recycle our capital through the sale of income properties based on, among other possible factors, the current or expected performance of the property and market conditions. Pursuant to our on-going review, two properties were sold in the first quarter of 2013. The Company anticipates making new investments in other income-producing assets with the proceeds from selling this property, utilizing the tax-deferred like-kind exchange structure, as circumstances permit.

Real Estate Operations. Until the significant downturn in the U.S. economy in 2008, the Company's land transaction activity had been reasonably strong in the preceding several years. During 2009, however, land transactions decreased significantly, and in fiscal years 2010 and 2011, there were effectively no land transactions. We believe the trend in Company revenues and income from real estate operations during this period were consistent with the overall trend of national and local economies and real estate markets in general. Over the last several years, roads and interstate overpasses have been constructed, extended, or improved in the Daytona Beach, Volusia County area, which we believe will benefit Company owned land and may have a positive impact on future activity of our land assets. Additionally, the Company received \$73,403 and \$11,957 from third parties for the purchase of impact fees in the first three months of 2013 and 2012, respectively. In the second quarter of 2012, we completed the sale of 16.6 acres of industrial land west of Interstate 95 at a price of \$618,272 or \$37,245 per acre. The gain on the sale of this land totaled \$573,069.

During 2011, the Company conducted an impairment analysis on approximately 300 acres of land, which had been reacquired in 2009 through a foreclosure proceeding. The analysis resulted in an impairment charge of \$2,606,412. The charge represented the entire cost basis of the property as management decided to abandon the property due to the high carrying costs associated with these parcels, as they were subject to the Indigo Community Development District bond issue, relative to the current market environment for undeveloped land. In the fourth quarter of 2012, the Company sold substantially all of its interest in this land to a third party for de minimus cash proceeds and the assumption of approximately \$238,000 of accrued liabilities.

Historical revenues and income in our real estate operations are not indicative of future results because of the unique nature of land transactions and variations in the cost basis of the owned land. A significant portion of the Company's revenue and income in any given year may be generated through relatively large commercial real estate transactions. The timing for these real estate transactions, from the time of preliminary discussions, contract negotiations, and due diligence periods to closing, can last from several months to several years. Although we believe there have been recent indications of improvement in the overall economy and credit markets, we do not expect a significant improvement of economic conditions in the near term, in particular with the real estate market, and as a result we believe our ability to enter into land transactions will remain challenging.

The Company owns full or fractional subsurface oil, gas, and mineral interests in approximately 490,000 surface acres in 20 Florida counties. Our subsurface operations consist of revenue from the leasing of exploration rights and in some instances additional revenues from royalties applicable to production from the leased acreage. During 2011, an eight-year oil exploration lease covering approximately 136,000 net mineral acres primarily located in Lee and Hendry Counties was executed and a \$913,657 first year rental payment was received. An additional \$922,114, representing the guaranteed payment for the second year delay lease payment, was received in September 2012. We are recognizing the two

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (continued)

payments totaling approximately \$1.83 million into income through the first two years of the lease, which expires September 2013. After the second year of the lease, the Company would receive royalty payments if oil production occurs. Alternately, if production does not commence by the third anniversary of the effective date of the lease and the lease is not terminated by the parties at that time, the Company will receive additional lease payments based upon the acres remaining under lease. The Company also generates income from the release of surface entry rights.

At March 31, 2013, the Company also received oil royalties from operating oil wells on 800 acres under a separate lease with a separate operator. The Company received oil royalties of \$88,070 and \$78,569 in the three months ended March 31, 2013, and 2012, respectively.

During the first quarter of 2012, the Company signed an excavation agreement for fill dirt removal with up to four nine-month excavation periods and received an upfront non-refundable payment of \$250,000 for the first excavation period beginning March 2012, and ending November 30, 2012. Through December 31, 2012, we recognized the entire non-refundable payment into income. The income from this excavation agreement was reclassified from Other Income into Real Estate Operations in the fourth quarter of 2012, and all prior quarterly information has been adjusted accordingly.

Golf Operations. Golf operations consist of the operation of two 18-hole championship golf courses with a three-hole practice facility, a clubhouse facility, and food and beverage activities within the LPGA International mixed-use residential community on the west side of Interstate 95 in Daytona Beach, Florida. LPGA International is a semi-private golf club consisting of an 18-hole course designed by Rees Jones and an 18-hole course designed by Arthur Hills.

The Company leases the land and certain improvements attributable to the golf courses under a long-term lease with the City of Daytona Beach, Florida (the "City"). The Company entered into a management agreement with an affiliate of ClubCorp America, effective January 25, 2012, to manage the LPGA International golf and clubhouse facilities. We believe ClubCorp, which owns and operates clubs and golf courses worldwide, brings substantial golf and club management expertise and knowledge to the LPGA International golf operations, including the utilization of national marketing capabilities, aggregated purchasing programs, and implementation of an affiliate member program, which should improve membership levels through the access to other member clubs in the affiliate program.

In July 2012, the Company entered into an agreement with the City to, among other things, amend the remaining lease payments under the golf course lease whereby the base rent payment scheduled to increase from \$250,000 to \$500,000 as of September 1, 2012, for the remainder of the lease term and any extensions, was kept at \$250,000, subject to an annual rate increase of 1.75% beginning September 1, 2013. Since the inception of the lease, the Company has been recognizing the rent expense on a straight-line basis resulting in an estimated accrual for deferred rent equal to approximately \$3.7 million, as of December 31, 2012. Upon the effective date of the amendment to the lease, the Company's straight-line rent was revised to reflect the lower rent levels through expiration of the lease. As a result, approximately \$3.0 million of the rent previously deferred will not be due, and will be recognized into income over the remaining lease term of 10 years. As of March 31, 2013, the adjusted liability equaled approximately \$3.6 million. As part of the lease amendment, we agreed to invest \$200,000 of capital improvements to the facilities by September 1, 2015. In December 2012, we completed a renovation of the clubhouse which involved both the remodeling of the primary food and beverage restaurant, as well as the pro shop, for a total cost of approximately \$425,000. In addition, beginning on September 1, 2012, and continuing throughout the initial lease term and any extension option, the Company will pay additional rent to the City in the amounts of 5.0% of gross revenues exceeding \$5,500,000 up to \$6,500,000 and 7.0% of gross revenues exceeding \$6,500,000. The lease matures in 2022 with seven renewal options of five years each.

Other Income. Substantially all of our other income consists of revenues generated by our agricultural operations. The Company's agricultural lands encompass approximately 9,700 acres in Daytona Beach, Florida. Our agricultural operations are managed by a third-party and consist of leasing land for hay production, timber harvesting, as well as hunting leases.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (continued)

SUMMARY OF OPERATING RESULTS FOR QUARTER ENDED MARCH 31, 2013 COMPARED TO MARCH 31, 2012

Total revenue for the three months ended March 31, 2013, increased 9.2% to \$5.1 million, compared to \$4.6 million for the three months ended March 31, 2012. This increase included approximately \$964,000 in additional rent revenue generated by our income properties portfolio primarily from properties acquired in 2012 and the first quarter of 2013, in addition to a \$135,106 increase in revenue from our golf operations, offset by a \$727,000 decrease in revenue from our real estate operations. Our income from continuing operations for the three months ended March 31, 2013, was approximately \$277,000 versus \$318,000 in the same period in 2012. Net income for the three months ended March 31, 2013, was approximately \$337,000, or \$0.06 per share, versus net income of approximately \$494,000, or \$0.09 per share in same period in 2012. The decrease in net income was primarily due to a decrease of approximately \$727,000 in revenue from our real estate operations which, in the first quarter of 2012, was the amount we recognized from the resolution of the Dunn Avenue extension matter. In addition, net income for the three months ended March 31, 2013 benefited from our increased revenues in the income property operations and golf operations of approximately \$964,000 and \$135,000, respectively, offset by increased non-cash expenses including depreciation and amortization and stock compensation which increased approximately \$235,000 and \$195,000, respectively.

INCOME PROPERTIES

Revenues and operating income from our income property operations totaled \$3.2 million and \$2.9 million, respectively, during the quarter ended March 31, 2013, compared to total revenue and operating income of \$2.2 million and \$2.0 million, respectively, for the three months ended March 31, 2012. The direct costs of revenues for our income property operations totaled \$229,509 and \$144,404 for the three months ended March 31, 2013 and 2012, respectively. The 44.0% increase in revenues reflects our expanded portfolio of income properties, with the benefit of 12 income properties acquired from May 2012 through January 3, 2013, and partial revenues from three properties acquired in late January of 2013. Our increased operating income from our income property operations reflects the aforementioned increased rent revenues offset by an increase of \$85,105 in our direct costs of revenues, which was primarily due to two of the properties acquired in January 2013, which are base stop leases resulting in increased operating expenses, including property taxes, for these properties.

REAL ESTATE OPERATIONS

During the quarter ended March 31, 2013, operating income from real estate operations was approximately \$217,000 on revenues totaling approximately \$338,000, a decrease of approximately \$684,000 in operating income compared to the same period in 2012. For the three months ended March 31, 2012, revenues were approximately \$1.07 million and income was approximately \$901,000. The revenue and income for the 2012 period included revenue of approximately \$730,000 recognized in connection with the final resolution of the Dunn Avenue Extension agreement.

GOLF OPERATIONS

The Company's golf operations had net operating income of approximately \$57,000 during the quarter ended March 31, 2013, representing a 143.3% improvement over the net operating loss of approximately \$132,000 in the first quarter of 2012. Revenues from golf operations totaled approximately \$1.46 million for the three months ended March 31, 2013, compared to total revenues of approximately \$1.33 million for the three months ended March 31, 2012. The total direct cost of golf operations revenues totaled approximately \$1.41 million and approximately \$1.46 million for the quarters ended March 31, 2013 and 2012, respectively. The approximately \$189,000 improvement in the net operating results from the golf operations was due to an increase of approximately 95% in the number of members since March 31, 2012, which resulted in an increase in revenues from membership activities of nearly \$120,000, which does not generate significant increased costs. In addition, our food and beverage revenues increased substantially as a result of our renovated facilities. Operating costs improved by 3.7% or approximately \$54,000 in the first quarter of 2013, compared to the same period in 2012.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (continued)

OTHER INCOME

For the three months ended March 31, 2013, revenues from other sources, primarily our agriculture operations, totaled approximately \$98,000, compared to approximately \$43,000, in the same period in 2012. The more than 128% increase in revenues primarily reflects revenues from additional timber harvesting. For the three months ended March 31, 2013, the direct cost of revenues totaled approximately \$31,000, compared to approximately \$72,000, in the same quarter in 2012, reflecting a decrease of approximately \$40,000, or 56.2%, which is attributable to the reduction of employees, the disposition of agricultural equipment and related maintenance and insurance, and the outsourcing of the agriculture operations. As a result of the increased revenue and decreased operating costs, the agriculture operations had net operating income of approximately \$66,000 in the quarter ended March 31, 2013, an improvement of approximately \$95,000, or 330% from the net operating loss of approximately \$29,000 in the quarter ended March 31, 2012.

GENERAL AND ADMINISTRATIVE AND OTHER CORPORATE EXPENSES

General and administrative expenses totaled approximately \$1.75 million and \$1.42 million for the three months ended March 31, 2013 and 2012, respectively. The increase in 2013 was primarily comprised of higher stock compensation costs, which totaled \$444,416, an increase of 77.7%, reflecting our higher stock price and additional grants of equity-based stock options in January 2013, and some increased payroll costs. General and administrative expenses for the three months ended March 31, 2012, included stock compensation cost of \$250,000.

Interest expense totaled approximately \$297,000 and \$150,000 for the quarters ended March 31, 2013 and 2012, respectively. The increased interest expense in the first quarter of 2013 compared to the same period in 2012 reflects our increased borrowings to finance our acquisition of more than \$53.5 million in income properties during the period from March 31, 2012 to March 31, 2013. During that period, our long-term debt increased \$32.9 million, of which approximately \$20.0 million occurred during the first quarter of 2013. In the first quarter of 2012 we also recognized a loss of \$245,726, related to the extinguishment of the debt outstanding that was paid off with proceeds from the new credit agreement entered into with Bank of Montreal ("BMO").

DISCONTINUED OPERATIONS

In the fourth quarter of 2012, one income property was classified as held for sale as we had commenced an active program to market and sell the property and determined there was a high probability that a sales transaction would occur within one year. An additional property was listed for sale, but not presented as assets held for sale on the balance sheet as no contract was in place. Both of these properties were sold during the three months ended March 31, 2013, therefore, these properties' operating results were included in discontinued operations for the three months ended March 31, 2013 and 2012.

LIQUIDITY AND CAPITAL RESOURCES

Cash totaled approximately \$1.4 million at March 31, 2013, with additional restricted cash of approximately \$890,000 being held in a reserve primarily for tenant improvements in connection with our financing of two properties acquired in January 2013.

Our total cash balance at March 31, 2013, reflects cash flows provided by operating activities totaling approximately \$1.4 million, during the quarter. This cash flow compares favorably to the prior year's cash flows provided by operating activities totaling approximately \$633,000. This improvement was primarily attributable to the improved operating results in 2013, including the increased cash flows generated by our income property portfolio, which expanded significantly since March 31, 2012 and our utilization of certain tax assets.

Our cash flows used in investing activities totaled approximately \$21.4 million for the three months ended March 31, 2013, reflecting the use of approximately \$27.8 million to acquire seven income properties during the quarter. Offset by the cash flow from investing activities were the proceeds from the sale of two income properties, for \$7.3 million.

Our cash flows provided by financing activities, totaled approximately \$20.2 million, for the three months ended March 31, 2013. As described below, the cash flows provided by our financing activities are primarily related to a net increase in the notes payable and our line of credit, which were utilized in our investing activities, offset by repayments on our credit facility.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (continued)

The note payable and line of credit totaled approximately \$49.2 million at March 31, 2013, representing an increase of approximately \$20.0 million from the balance of approximately \$29.1 million at December 31, 2012. The increase in the note payable and line of credit was due to our acquisition activities net of payments we made to reduce the balance outstanding on the line of credit, utilizing cash from our operations and the proceeds from the origination of the notes payable.

On February 27, 2012, we entered into a financing agreement with BMO. The agreement consisted of a \$46.0 million revolving credit facility with a maturity of February 27, 2015, subject to a one-year extension at the option of the Company. The indebtedness outstanding accrued interest, prior to the amendments of the agreement at a rate ranging from the 30-day London Interbank Offer Rate ("LIBOR") plus basis points to LIBOR plus 250 basis points, with the spread over LIBOR based on a ratio of the Company's total indebtedness to total asset value. The indebtedness under the facility is unsecured and is guaranteed by certain subsidiaries of the Company.

On September 20, 2012, the Company entered into the First Amendment to the Credit Agreement ("Amendment"). This Amendment, under the accordion feature, expanded the credit facility to \$62.0 million. The Amendment also modified some of the restrictive covenants contained in the original Agreement. The changes to the restrictive covenants are not considered material in nature. On September 21, 2012, Branch Banking and Trust Company was added as a participating lender to the Agreement in the amount of \$16.0 million. On February 14, 2013, Wells Fargo Bank N.A. was added as a participant lender to the Agreement in the amount of \$20.0 million and the total available capacity on the facility was increased to \$66.0 million. As a result, as of February 14, 2013, BMO's commitment under the \$66.0 million facility capacity totaled \$30.0 million.

On March 29, 2013, the Company entered into the second amendment to the Credit Agreement ("Second Amendment"). The Second Amendment expands the accordion feature allowing the Company to increase the facility up to \$125 million and reduces the interest rate by 25 basis points, which now ranges from LIBOR plus 150 basis points up to LIBOR plus 225 basis points, based on the Company's debt level. The Second Amendment also extends the maturity date to March 31, 2016 from February 27, 2015.

On February 14, 2013, the Company sold its interest in the 4,128 square-foot building under lease to PNC Bank, located in Alpharetta, Georgia. The sales price on this transaction amounted to \$3,550,000. The property was written down to estimated fair value resulting in a loss of \$426,794, and was presented as assets held for sale on the consolidated balance sheet at December 31, 2012. The property's operating results were included in discontinued operations for each of the three months ended March 31, 2013 and 2012. On February 21, 2013, the Company sold its interest in the 13,824 square-foot building under lease to CVS, located in Clermont, Florida. The sales price on this transaction amounted to \$4,050,000. As of December 31, 2012, no contract was in place, therefore, this property was not presented as assets held for sale on the balance sheet. However, upon the sale, the property's operating results were included in discontinued operations for the three months ended, March 31, 2013 and 2012.

As noted previously, the Company used approximately \$27.8 million of cash to acquire seven income properties during the first quarter ended March 31, 2013. These acquisitions included: four single-tenant bank branches in Orange and Los Angeles County, California for \$8.0 million, a single-tenant property located in Phoenix, Arizona for \$5.0 million, and two single-tenant office properties in Orlando, Florida for \$14.6 million. We are targeting additional investments between approximately \$18 million to \$28 million in income-producing properties or mortgage loans during the remainder of 2013. We expect to fund these acquisitions utilizing the available capacity under our credit facility of approximately \$47.3 million, cash from operations, proceeds from the dispositions of non-core income properties or transactions in our land assets, which we expect will qualify under the like-kind exchange deferred-tax structure, and additional financing sources.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (continued)

Additional funds expected to be invested for tenant improvements on our self-developed income properties will only occur as new leases are secured. As of March 31, 2013, our contractual requirements to make capital expenditures are limited to certain tenant improvements for the two income properties leased to Hilton Resorts Corporation in the amount of approximately \$773,000 for which we have recognized an obligation and reserved sufficient cash to fund the improvements, which is included in restricted cash as of March 31, 2013. Investments in capital improvements can be reduced at our discretion based on operating cash needs. We do not anticipate investing significant funds on further improvements to the golf operations facilities in 2013.

We believe we will have sufficient liquidity to fund our operations, capital requirements, and debt service requirements over the next twelve months and into the foreseeable future, with cash flow from our operations and the aforementioned available capacity on the existing \$66.0 million credit facility as of March 31, 2013.

During the fourth quarter of 2008, our Board of Directors authorized a program to repurchase shares of our common stock having an aggregate value of up to \$8,000,000. The authorization permits us to effect repurchases from time to time through a variety of methods including open market repurchases and privately negotiated transactions. Through March 31, 2013, 4,660 shares had been repurchased at a total cost of \$104,648, with no repurchases occurring during 2013.

On April 26, 2012, the Company announced a voluntary Odd-Lot Buy-Back Program (the "Program"), whereby the Company offered to purchase shares from shareholders who owned less than 100 shares of the Company's common stock as of April 26, 2012 for \$31.00 per share. The Program reflected the Company's interest in reducing the ongoing costs associated with shareholder recordkeeping and communications and to assist shareholders who may be deterred from selling their small lots of stock due to the costs that would be incurred. The Company paid all costs associated with the Program and purchased 14,634 shares under the Program at a total cost of \$453,654. The Program expired June 30, 2012. The Company did not provide any recommendation regarding shareholder participation and the decision was entirely that of each shareholder as to whether to sell shares in this Program.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (continued)

Our Board of Directors and management consistently review the allocation of capital with the goal of providing the best long-term return for our shareholders. These reviews consider various alternatives, including increasing or decreasing regular dividends, repurchasing stock, and retaining funds for reinvestment. Annually, the Board reviews our business plan and corporate strategies and makes adjustments as circumstances warrant. Management's focus is to continue our strategy to diversify our portfolio by redeploying proceeds from like-kind exchange transactions and utilizing our credit facility to increase our portfolio of income-producing properties, providing stabilized cash flows with good risk adjusted returns primarily in larger metropolitan areas.

We may also utilize our under-leveraged balance sheet to invest in loans, securities, and other shorter term investments. Targeted investment classes include the following:

- Retail and office double-or-triple-net leased properties in major metropolitan areas;
- Stabilized multi-tenant office and retail properties in major metropolitan areas;
- Select office, flex, industrial, and retail self-developed properties on Company owned land;
- Joint venture development using Company owned land;
- Origination or purchase of 1-5 year term loans on strong risk-adjusted yields with property types to include hotel, office, retail, and industrial;
- Real estate related investment securities, including commercial mortgage backed securities, preferred stock, and bonds;
- Select regional area investments using Company market knowledge and expertise to earn good risk adjusted yields; and
- Purchase or origination of ground leases.

CRITICAL ACCOUNTING POLICIES

The consolidated financial statements are prepared in conformity with U.S. generally accepted accounting principles ("GAAP"). The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses. Actual results could differ from those estimates.

Our significant accounting policies are described in the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the year-ended December 31, 2012. Judgments and estimates of uncertainties are required in applying our accounting policies in many areas. During the three months ended March 31, 2013, there have been no material changes to the critical accounting policies affecting the application of those accounting policies as noted in our Annual Report on Form 10-K for the year ended December 31, 2012.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISKS

The principal market risk (i.e., the risk of loss arising from adverse changes in market rates and prices) to which we are exposed is interest rates. The objective of our asset management activities is to provide an adequate level of liquidity to fund operations and capital expansion, while minimizing market risk. We utilize overnight sweep accounts and short-term investments to minimize our interest rate risk. We do not actively invest or trade in equity securities. We do not believe that this interest rate risk related to cash equivalents and short-term investments is material due to the nature of the investments.

We manage our debt, considering investment opportunities and risk, tax consequences, and overall financial strategies. We are primarily exposed to interest rate risk on our outstanding debt borrowings, which totaled \$49.1 at March 31, 2013. Our borrowings include \$18.7 million outstanding on our \$66.0 million revolving credit facility, which bears a variable rate of interest based on the 30-day LIBOR and our level of borrowing as a percentage of our total asset value. Approximately \$30.4 million of our outstanding debt bears interest at a fixed rate of 3.67%. Management's objective is to limit the impact of interest rate changes on earnings and cash flows and to lower the overall borrowing costs. A hypothetical change in the interest rate of 100 basis points (i.e. 1%) would affect our financial position, results of operations, and cash flows by approximately \$187,000.

ITEM 4. CONTROLS AND PROCEDURES

As of the end of the period covered by this report, an evaluation, as required by Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934 (the “Exchange Act”), was carried out under the supervision and with the participation of the Company’s management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), of the effectiveness of the Company’s disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Exchange Act). Based on that evaluation, our CEO and CFO have concluded that the design and operation of the Company’s disclosure controls and procedures were effective as of March 31, 2013, to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms, and to provide reasonable assurance that information required to be disclosed by the Company in such reports is accumulated and communicated to the Company’s management, including our CEO and CFO, as appropriate to allow timely decisions regarding required disclosure. There were no changes in the Company’s internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) under the Exchange Act) during the fiscal quarter ended March 31, 2013, that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, the Company may be a party to certain legal proceedings, incidental to the normal course of its business. While the outcome of the legal proceedings cannot be predicted with certainty, the Company does not expect that these proceedings will have a material effect upon our financial condition or results of operations.

In September 2010, St. Johns River Water Management District (the "District") served the Company with an administrative complaint filed with the Florida Division of Administrative Hearings in connection with certain Company agricultural operations. In August 2012 the Company submitted a proposed settlement offer to the District, offering certain undeveloped acreage owned by the Company. The Company accrued a reserve equal to \$611,691 in the quarter ended September 30, 2012, reflecting the Company's carrying value of the acreage offered to settle the matter. In December 2012, the Company and the District executed a settlement agreement ("SJRWMD Agreement") in which the Company agreed to submit an after-the-fact permit application and increased the undeveloped acreage offered for mitigation in connection with the permit. The Company adjusted the reserve to a total of \$723,058 to reflect the increased acreage offered in the SJRWMD Agreement. The SJRWMD Agreement was contingent upon the Company and the District reaching agreement on a management fee and issuance of the permit. The Company submitted its permit application on January 28, 2013. In March 2013 the Company conveyed the acreage contemplated by the SJRWMD Agreement, the District issued the after-the-fact permit and the litigation was settled.

On November 21, 2011, the Company, Indigo Mallard Creek LLC and Indigo Development LLC, as owners of the property leased to Harris Teeter, Inc. ("Harris Teeter") in Charlotte, North Carolina, were served with pleadings filed in the General Court of Justice, Superior Court Division for Mecklenburg County, North Carolina, for a highway condemnation action involving the property. The proposed road modifications would impact access to the Company's property that is leased to Harris Teeter. The Company does not believe the road modifications provide a basis for Harris Teeter to terminate the Lease. In May 2012, the North Carolina Department of Transportation ("NCDOT") indicated that while it had not reached a final decision on its consideration of this matter, the intersection would remain all-access. On November 6, 2012, the Company filed its response to the condemnation pleadings. The trial in this matter has been initially scheduled for the week of September 16, 2013, with mediation to occur prior to July 22, 2013. In January 30, 2013, NCDOT proposed to redesign the road modifications to keep the all access intersection open for ingress with no change to the planned limitation on egress to the right-in/right-out only. Additionally, NCDOT and the City of Charlotte ("Charlotte") proposed to build and maintain a new access road/point into the property. These proposals are tentative and any proposed action by NCDOT and Charlotte would require NCDOT and Charlotte to obtain additional public funding.

In May 2010, the Company filed a lawsuit in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, in order to enforce its approximate \$3.8 million claim of lien on real property owned by FM Bayberry Cove Holding, LLC ("FM Bayberry") for its share of the costs for construction of a road. BB&T was included as a defendant as the current mortgage holder of the property subject to the Company's lien. BB&T filed a counterclaim asserting that its mortgage is superior to the Company's claim of lien which the Company denied. BB&T and the Company each filed motions for summary judgment as to the priority of their respective interests in the property which were heard by the court on January 12, 2012. The Circuit Court determined that the Company's interests were superior to the lien imposed by BB&T and all other interests. The Company subsequently filed a motion for summary judgment of foreclosure, which was granted and the Final Judgment of Foreclosure was entered in August 2012. However, all further proceedings in the Circuit Court (including the foreclosure sale) are stayed pending BB&T's appeal to the Florida District Court of Appeal, Fifth District regarding the Circuit Court's determination in the matter of priority. In December 2012, the Company and BB&T attended an appellate court-ordered mediation. The mediation was terminated on or about January 10, 2013, when the parties were unable to reach agreement. This matter is continuing in the appeal at this time with BB&T's initial brief due to be filed on or about May 1, 2013. As of December 31, 2012, the amount of the judgment plus interest is in excess of \$4.4 million.

ITEM 1A. RISK FACTORS

Certain statements contained in this report (other than statements of historical fact) are forward-looking statements. The words “believe,” “estimate,” “expect,” “intend,” “anticipate,” “will,” “could,” “may,” “should,” “plan,” “potential,” “predict,” “forecast,” “project,” and similar expressions and variations thereof identify certain of such forward-looking statements, which speak only as of the dates on which they were made. Forward-looking statements are made based upon management’s expectations and beliefs concerning future developments and their potential effect upon the Company. There can be no assurance that future developments will be in accordance with management’s expectations or that the effect of future developments on the Company will be those anticipated by management.

We wish to caution readers that the assumptions, which form the basis for forward-looking statements with respect to or that may impact earnings for the year-ended December 31, 2013, and thereafter, include many factors that are beyond the Company’s ability to control or estimate precisely. These risks and uncertainties include, but are not limited to, the strength of the real estate market in the City of Daytona Beach and Volusia County, Florida; the impact of a prolonged recession or further downturn in economic conditions; our ability to successfully execute acquisition or development strategies; any loss of key management personnel; changes in local, regional, and national economic conditions affecting the real estate development business and income properties; the impact of environmental and land use regulations; extreme or severe weather conditions; the impact of competitive real estate activity; variability in quarterly results due to the unpredictable timing of land transactions; the loss of any major income property tenants; and the availability of capital. These risks and uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements.

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Part I, “Item 1A. Risk Factors” in the Company’s Annual Report on Form 10-K for the yearended December 31, 2012. There have been no material changes to those risk factors. The risks described in the Annual Report on Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to the Company or that the Company currently deems to be immaterial also may materially adversely affect the Company.

While we periodically reassess material trends and uncertainties affecting our results of operations and financial condition, we do not intend to review or revise any particular forward-looking statement referenced herein in light of future events.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

There were no unregistered sales of equity securities during the quarter ended March 31, 2013, which were not previously reported.

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ITEM 6. EXHIBITS

(a) Exhibits:

Exhibit 3.1	Amended and Restated Articles of Incorporation of Consolidated-Tomoka Land Co., dated October 26, 2011, filed as Exhibit 3.1 to the registrant's Current Report Form 8-K filed October 28, 2011, and incorporated herein by reference.
Exhibit 3.2	Amended and Restated Bylaws of Consolidated-Tomoka Land Co., dated April 27, 2011, filed as Exhibit 3.2 to the registrant's Current Report on Form 8-K filed April 28, 2011, and incorporated herein by reference.
Exhibit 10.34	Loan Agreement between Bluebird Metrowest Orlando LLC and UBS Real Estate Securities, Inc. dated February 22, 2013, filed as Exhibit 10.34 with this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013.
Exhibit 10.35	Loan Agreement between the Company and the affiliates of the Company set forth therein, as borrowers, and Bank of America, N.A. dated March 8, 2013, filed as Exhibit 10.35 with this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013.
Exhibit 10.36	Amendment to the Credit Agreement between Consolidated-Tomoka Land Co. and Bank of Montreal dated March 29, 2013, filed as Exhibit 10.36 with this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013.
Exhibit 31.1	Certification furnished pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
Exhibit 31.2	Certification furnished pursuant to Section 302 of Sarbanes-Oxley Act of 2002.
Exhibit 32.1	Certification pursuant to 18 U.S.C. Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 32.2	Certification pursuant to 18 U.S.C. Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 101.INS	*XBRL Instance Document
Exhibit 101.SCH	*XBRL Taxonomy Extension Schema Document
Exhibit 101.CAL	*XBRL Taxonomy Extension Calculation Linkbase Document
Exhibit 101.LAB	*XBRL Taxonomy Extension Label Linkbase Document
Exhibit 101.PRE	*XBRL Taxonomy Extension Presentation Linkbase Document
Exhibit 101.DEF	*XBRL Taxonomy Definition Linkbase Document

* Furnished herewith (not filed).

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Signatures

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

CONSOLIDATED-TOMOKA LAND CO.
(Registrant)

May 3, 2013

By: /S/ JOHN P. ALBRIGHT

John P. Albright
President and Chief Executive Officer
(Principal Executive Officer)

May 3, 2013

By: /S/ MARK E. PATTEN

Mark E. Patten, Senior Vice President and
Chief Financial Officer
(Principal Financial and Accounting Officer)

LOAN AGREEMENT

Dated as of February 22, 2013

Between

BLUEBIRD METROWEST ORLANDO LLC,
as Borrower

and

UBS REAL ESTATE SECURITIES INC.,
as Lender

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LOAN AGREEMENT

THIS **LOAN AGREEMENT**, dated as of February 22, 2013 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**"), between **UBS REAL ESTATE SECURITIES INC.**, a Delaware corporation, having an address at 1285 Avenue of the Americas, New York, New York 10019 (together with its successors and assigns, collectively, "**Lender**"), and **BLUEBIRD METROWEST ORLANDO LLC**, a Delaware limited liability company, having an address at 1530 Cornerstone Boulevard, Suite 100, Daytona Beach, Florida 32117 (together with its permitted successors and assigns, collectively, "**Borrower**").

All capitalized terms used herein shall have the respective meanings set forth in Article I hereof.

WITNESSETH:

WHEREAS, Borrower desires to obtain the Loan from Lender; and

WHEREAS, subject to and in accordance with the terms and conditions of this Agreement and the other Loan Documents and based upon the representations, warranties, covenants and undertakings of Borrower herein and therein contained, Lender is willing to make the Loan to Borrower.

NOW, THEREFORE, in consideration of the covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions.

For all purposes of this Agreement, except as otherwise expressly provided:

"**Acceptable Hilton Lease Extension**" shall mean an extension or renewal of the Hilton Lease on terms and conditions reasonably acceptable to Lender, provided that the term of such renewal or extension shall be for at least the Hilton Renewal Term.

"**Act**" shall have the meaning set forth in Section 3.1.24(s) hereof.

"**Affiliate**" shall mean, as to any Person, any other Person that (i) directly or indirectly, owns ten percent (10%) or more of legal, beneficial or economic interests in such Person, (ii) is in control of, is controlled by or is under common ownership or control with such Person, (iii) is a director or officer of such Person or of an Affiliate of such Person and/or (iv) is the spouse, issue or parent of such Person or of an Affiliate of such Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms "controlled" and "controlling" shall have correlative meanings.

“**Affiliated Manager**” shall mean any Manager that is an Affiliate of Borrower, Sole Member or Guarantor.

“**Agreement**” shall have the meaning set forth in the introductory paragraph hereto.

“**ALTA**” shall mean American Land Title Association or any successor thereto.

“**Alteration Threshold**” shall mean \$365,000.

“**Annual Budget**” shall mean the operating and capital budget for the Property prepared by Borrower in accordance with Section 4.1.6(h) hereof for the applicable period or Fiscal Year.

“**Appraisal**” shall mean an appraisal of the Property in its then “as is” condition, prepared not more than ninety (90) days prior to the Closing Date (or other relevant date with respect to an updated Appraisal or an Appraisal) by a member of the American Institute of Real Estate Appraisers selected by Lender, which appraisal (i) shall meet the minimum appraisal standards for national banks promulgated by the Comptroller of the Currency pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (FIRREA), and (ii) otherwise shall be in form and substance satisfactory to Lender in its sole and absolute discretion.

“**Approved Annual Budget**” shall have the meaning set forth in Section 4.1.6(h) hereof.

“**Assignment of Leases**” shall mean that certain first priority Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Assignment of Management Agreement**” shall mean an Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation.

“**Bankruptcy Action**” shall mean, with respect to any Person, (i) such Person filing a voluntary petition under the Bankruptcy Law; (ii) the filing of an involuntary petition against such Person under the Bankruptcy Law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (iii) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Law; (iv) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; or (v) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Law**” shall mean the U.S. Bankruptcy Code, any other federal, state or foreign bankruptcy or insolvency law and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights.

“**Basic Carrying Costs**” shall mean the sum of the following costs associated with the Property for the applicable period or Fiscal Year: (i) Taxes, (ii) Other Charges and (iii) Insurance Premiums.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto.

“**Borrower’s Recourse Liabilities**” shall have the meaning set forth in Section 11.22 hereof.

“**Business Day**” shall mean any day other than a Saturday, a Sunday or a legal holiday on which national banks are not open for general business in (i) the State of New York, (ii) the state where the corporate trust office of the Trustee is located, or (iii) the state where the servicing offices of the Servicer are located.

“**Capital Expenditure Account**” shall have the meaning set forth in Section 6.4.1 hereof.

“**Capital Expenditure Funds**” shall have the meaning set forth in Section 6.4.1 hereof.

“**Capital Expenditure Work**” shall mean any labor performed or materials provided or installed in connection with any Capital Expenditures.

“**Capital Expenditures**” shall mean, for any period, the amounts expended for items required to be capitalized under GAAP (including expenditures for replacements, building improvements, major repairs, alterations, tenant improvements and leasing commissions).

“**Cash Management Account**” shall have the meaning set forth in Section 2.7.2 hereof.

“**Cash Management Activation Notice**” shall mean a written notice from Lender or Servicer to Clearing Bank stating that a Cash Management Trigger Event has occurred and instructing Clearing Bank to transfer all available funds in the Clearing Account to the Cash Management Account in accordance with the Clearing Account Agreement.

“**Cash Management Agreement**” shall mean that certain Cash Management Agreement, dated as of the date hereof, among Lender, Borrower, Manager and Cash Management Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Cash Management Bank**” shall mean Wells Fargo Bank, N.A. or any successor Eligible Institution acting as Cash Management Bank under the Cash Management Agreement.

“**Cash Management De-Activation Notice**” shall mean a written notice from Lender or Servicer to Clearing Bank stating that a Cash Management Trigger Event no longer exists and instructing Clearing Bank to transfer all available funds in the Clearing Account to an account designated by Borrower in accordance with the Clearing Account Agreement.

“Cash Management DSCR Trigger Event” shall mean that, as of any date on which Lender determines the Debt Service Coverage Ratio, the Debt Service Coverage Ratio based on the trailing twelve (12) month period immediately preceding the date of such determination is less than 1.25 to 1.0.

“Cash Management Trigger Event” shall mean the occurrence of:

- (i) an Event of Default;
- (ii) any Bankruptcy Action of Borrower;
- (iii) any Bankruptcy Action of Guarantor;
- (iv) any Bankruptcy Action of Manager;
- (v) a Cash Management DSCR Trigger Event; or
- (vi) a Hilton Trigger Event.

“Cash Management Trigger Event Cure” shall mean:

- (i) if the Cash Management Trigger Event is caused solely by the occurrence of clause (i) in the definition of “Cash Management Trigger Event,” a cure of the Event of Default which is accepted or waived in writing by Lender which gave rise to such Cash Management Trigger Event; provided that Lender shall not have exercised any of its rights under Section 10.2 hereof to accelerate the Loan, move to appoint a receiver or commence a foreclosure action;
- (ii) if the Cash Management Trigger Event is caused solely by the occurrence of clause (ii) in the definition of “Cash Management Trigger Event,” if such Cash Management Trigger Event is as a result of the filing of an involuntary petition against Borrower with respect to which neither Borrower, Guarantor nor any Affiliate of Borrower or Guarantor solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced in or joined in such involuntary petition, upon the same being discharged, stayed or dismissed within ninety (90) days of such filing; provided that (A) in Lender’s reasonable opinion, such filing (after dismissal or discharge) does not materially increase Borrower’s monetary obligations and (B) Borrower is not in Default of the provisions set forth in Section 3.1.24 hereof or Section 8.1 hereof;
- (iii) if the Cash Management Trigger Event is caused solely by the occurrence of clause (iii) in the definition of “Cash Management Trigger Event,” if such Cash Management Trigger Event is as a result of the filing of an involuntary petition against Guarantor with respect to which neither Guarantor nor any Affiliate of Guarantor solicited or caused to be solicited petitioning creditors or consented to

or otherwise acquiesced in or joined in such involuntary petition, upon the same being discharged, stayed or dismissed within ninety (90) days of such filing; provided that, in Lender's reasonable opinion, such filing (after dismissal or discharge) does not (A) materially increase Guarantor's monetary obligations or (B) materially and adversely affect Guarantor's ability to perform its obligations under the Loan Documents to which it is a party;

(iv) if the Cash Management Trigger Event is caused solely by the occurrence of clause (iv) in the definition of "Cash Management Trigger Event," (A) if Borrower replaces Manager with a Qualified Manager pursuant to a Replacement Management Agreement, or (B) if such Cash Management Trigger Event is as a result of the filing of an involuntary petition against Manager with respect to which neither Manager nor any Affiliate of Manager solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced in or joined in such involuntary petition, upon the same being discharged, stayed or dismissed within one hundred twenty (120) days of such filing; provided that, in Lender's reasonable opinion, such filing (after dismissal or discharge) does not materially and adversely affect Manager's ability to perform its obligations under the Management Agreement;

(v) if the Cash Management Trigger Event is caused solely by the occurrence of clause (v) in the definition of "Cash Management Trigger Event," once the Debt Service Coverage Ratio based upon the trailing twelve (12) month period immediately preceding the date of such determination is greater than 1.25 to 1:0 for two (2) consecutive quarters; and

(vi) if the Cash Management Trigger Event is caused by the occurrence of clause (vi) in the definition of "Cash Management Trigger Event", the occurrence of an applicable Hilton Trigger Event Cure,

provided that each Cash Management Trigger Event Cure set forth above shall be subject to the following conditions: (1) after giving effect to such Cash Management Trigger Event Cure, no Cash Management Trigger Event shall have occurred and remain outstanding, (2) Borrower shall have notified Lender in writing of its election to cure the applicable Cash Management Trigger Event, (3) a Cash Management Trigger Event Cure may occur no more than two (2) times during the term of the Loan, and (4) Borrower shall have paid all of Lender's reasonable costs and expenses incurred in connection with such Cash Management Trigger Event Cure (including reasonable attorneys' fees and expenses).

"Cash Management Trigger Event Period" shall mean any period commencing on the occurrence of a Cash Management Trigger Event and continuing until the earlier of (i) the Monthly Payment Date following the occurrence of the applicable Cash Management Trigger Event Cure or (ii) the payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents in accordance with the terms and provisions of the Loan Documents.

“**Cash Sweep DSCR Trigger Event**” shall mean that, as of any date on which Lender determines the Debt Service Coverage Ratio, the Debt Service Coverage Ratio based on the trailing twelve (12) month period immediately preceding the date of such determination is less than 1.25 to 1.0.

“**Cash Sweep Event**” shall mean the occurrence of:

- (i) an Event of Default;
- (ii) any Bankruptcy Action of Borrower;
- (iii) any Bankruptcy Action of Guarantor;
- (iv) any Bankruptcy Action of Manager; or
- (v) a Cash Sweep DSCR Trigger Event.

“**Cash Sweep Event Cure**” shall mean:

- (i) if the Cash Sweep Event is caused solely by the occurrence of clause (i) in the definition of “Cash Sweep Event,” a cure of the Event of Default which is accepted or waived in writing by Lender which gave rise to such Cash Sweep Event; provided that Lender shall not have exercised any of its rights under Section 10.2 hereof to accelerate the Loan, move to appoint a receiver or commence a foreclosure action;
- (ii) if the Cash Sweep Event is caused solely by the occurrence of clause (ii) in the definition of “Cash Sweep Event,” if such Cash Sweep Event is as a result of the filing of an involuntary petition against Borrower with respect to which neither Borrower, Guarantor nor any Affiliate of Borrower or Guarantor solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced in or joined in such involuntary petition, upon the same being discharged, stayed or dismissed within ninety (90) days of such filing; provided that (A) in Lender’s reasonable opinion, such filing (after dismissal or discharge) does not materially increase Borrower’s monetary obligations and (B) Borrower is not in Default of the provisions set forth in Section 3.1.24 hereof or Section 8.1 hereof;
- (iii) if the Cash Sweep Event is caused solely by the occurrence of clause (iii) in the definition of “Cash Sweep Event,” if such Cash Sweep Event is as a result of the filing of an involuntary petition against Guarantor with respect to which neither Guarantor nor any Affiliate of Guarantor solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced in or joined in such involuntary petition, upon the same being discharged, stayed or dismissed within ninety (90) days of such filing; provided that, in Lender’s reasonable opinion, such filing (after dismissal or discharge) does not (A) materially increase Guarantor’s monetary obligations or (B) materially and adversely affect Guarantor’s ability to perform its obligations under the Loan Documents to which it is a party;

(iv) if the Cash Sweep Event is caused solely by the occurrence of clause (iv) in the definition of “Cash Sweep Event,” (A) if Borrower replaces Manager with a Qualified Manager pursuant to a Replacement Management Agreement, or (B) if such Cash Sweep Event is as a result of the filing of an involuntary petition against Manager to which Manager did not consent, upon the same being discharged, stayed or dismissed within one hundred twenty (120) days of such filing; provided that, in Lender’s reasonable opinion, such filing (after dismissal or discharge) does not materially and adversely affect Manager’s ability to perform its obligations under the Management Agreement; and

(v) if the Cash Sweep Event is caused solely by the occurrence of clause (v) in the definition of “Cash Sweep Event,” once the Debt Service Coverage Ratio based upon the trailing twelve (12) month period immediately preceding the date of such determination is greater than 1.25 to 1:0 for two (2) consecutive quarters,

provided that each Cash Sweep Event Cure set forth above shall be subject to the following conditions: (1) after giving effect to such Cash Sweep Event Cure, no Cash Sweep Event shall have occurred and remain outstanding, (2) Borrower shall have notified Lender in writing of its election to cure the applicable Cash Sweep Event, and (3) Borrower shall have paid all of Lender’s reasonable costs and expenses incurred in connection with such Cash Sweep Event Cure (including reasonable attorneys’ fees and expenses); provided, further, so long as the conditions precedent set forth in the foregoing clauses (1) through (3) of this paragraph have been satisfied, Borrower shall have the unlimited right to effect a Cash Sweep Event Cure from time to time throughout the Term.

“**Cash Sweep Event Period**” shall mean any period commencing on the occurrence of a Cash Sweep Event and continuing until the earlier of (i) the Monthly Payment Date following the occurrence of the applicable Cash Sweep Event Cure or (ii) the payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents in accordance with the terms and provisions of the Loan Documents.

“**Casualty**” shall mean any casualty, damage or injury, by fire or otherwise, to the Property or any part thereof.

“**Casualty Consultant**” shall have the meaning set forth in Section 5.3.2(c) hereof.

“**Casualty Retainage**” shall have the meaning set forth in Section 5.3.2(d) hereof.

“**Clearing Account**” shall have the meaning set forth in Section 2.7.1 hereof.

“**Clearing Account Agreement**” shall mean that certain Deposit Account Control Agreement, dated as of the date hereof, among Lender, Borrower, Manager and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Clearing Bank**” shall mean Wells Fargo Bank, N.A. or any successor Eligible Institution acting as Clearing Account Bank under the Clearing Account Agreement.

“**Closing Date**” shall mean the date hereof.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“**Debt**” shall mean the Outstanding Principal Balance, together with all interest accrued and unpaid thereon, and all other sums due to Lender in respect of the Loan under the Note, this Agreement or any other Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, the aggregate amount of scheduled principal and interest payments due and payable under the Note and this Agreement.

“**Debt Service Coverage Ratio**” shall mean the ratio, as determined by Lender for the applicable period, in which:

- (i) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly) for such period as set forth in financial statements required hereunder, without deduction for (a) actual management fees incurred in connection with the operation of the Property or (b) actual amounts paid to the Reserve Funds, less (1) management fees equal to the greater of (A) assumed management fees of three percent (3%) of Gross Income from Operations and (B) the actual management fees incurred, (2) Capital Expenditure Fund contributions for such period based on an assumed annual amount equal to \$0.30 per square foot of gross leasable area at the Property, (3) tenant improvements and leasing commissions for such period based on an assumed annual amount equal to \$0.75 per square foot of gross leasable area at the Property and (4) vacancy allowance based on the greater of (A) an assumed vacancy rate of fifteen percent (15%) and (B) the actual vacancy at the Property; and
- (ii) the denominator is the aggregate Debt Service due and payable during such period.

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the Maximum Legal Rate or (ii) five percent (5%) above the Interest Rate.

“**Defeasance Collateral**” shall mean, in connection with the Defeasance Event, U.S. Obligations which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all scheduled Monthly Payment Dates and other scheduled payment dates, if any, under the Note after the Defeasance Date upon which payments are required under the Note and this Agreement, and (ii) in amounts equal to the scheduled payments due on such Monthly Payment Dates or other scheduled payment dates under the Note and this Agreement (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Monthly Payment Dates or other scheduled payment dates); provided that the Note shall be deemed, for purposes of this definition, to be due and payable and shall be prepaid in full on the Open Prepayment Commencement Date (such scheduled payments, collectively, the “Scheduled Defeasance Payments”).

“**Defeasance Collateral Account**” shall have the meaning set forth in Section 2.5.2 hereof.

“**Defeasance Date**” shall have the meaning set forth in Section 2.5.1(a) hereof.

“**Defeasance Lockout Expiration Date**” shall mean the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the Securitization Vehicle established in connection with the last Securitization involving any portion of the Loan.

“**Defeasance Event**” shall have the meaning set forth in Section 2.5.1 hereof.

“**Defeasance Security Agreement**” shall mean a pledge and security agreement in form and substance that would be satisfactory to a prudent lender pursuant to which Borrower grants Lender a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

“**Disclosure Documents**” shall mean, collectively, any written materials used or provided to any prospective investors and/or NRSROs in connection with any public offering or private placement in connection with a Securitization (including, without limitation, a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents, marketing materials or information provided to prospective investors), in each case in preliminary or final form and including any amendments, supplements, exhibits, annexes and other attachments thereto.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (i) an account or accounts (or subaccounts thereof) maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (ii) a segregated trust account or accounts (or subaccounts thereof) maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity that has a Moody’s rating of at least “Baa3” and

that, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account shall not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s, and “F-1” by Fitch in the case of accounts in which funds are held for thirty (30) days or less or, in the case of Letters of Credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “A” by S&P, “A2” by Moody’s and “A” by Fitch.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Environmental Law**” shall have the meaning set forth in the Environmental Indemnity.

“**Equipment**” shall have the meaning set forth in the granting clause of the Security Instrument.

“**ERISA**” shall have the meaning set forth in [Section 4.2.10](#) hereof.

“**ESA**” shall have the meaning set forth in [Section 3.1.50\(d\)](#) hereof.

“**Event of Default**” shall have the meaning set forth in [Section 10.1](#) hereof.

“**Excess Cash Flow**” shall have the meaning set forth in [Section 2.7.2](#) hereof.

“**Excess Cash Flow Account**” shall have the meaning set forth in [Section 6.7.1](#) hereof.

“**Excess Cash Flow Funds**” shall have the meaning set forth in [Section 6.7.1](#) hereof.

“**Exchange Act**” shall have the meaning set forth in [Section 9.2\(a\)](#) hereof.

“**Exchange Act Filing**” shall mean a filing pursuant to the Exchange Act in connection with or relating to a Securitization.

“**Executive Order**” shall mean an Executive Order of the President of the United States of America.

“**Extraordinary Expense**” shall have the meaning set forth in [Section 4.1.6\(h\)](#) hereof.

“**Extraordinary Lease Payments**” shall have the meaning set forth in [Section 6.5.1\(b\)](#) hereof.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the Term.

“**Fitch**” shall mean Fitch, Inc.

“**GAAP**” shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession.

“**Government Lists**” shall mean, collectively, (i) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC, and (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order.

“**Governmental Authority**” shall mean any court, agency, board, bureau, commission, department, office or other authority of any nature whatsoever of any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“**Grantor Trust**” shall mean a grantor trust under Subpart E of Part 1 of Subchapter J of the Code.

“**Gross Income from Operations**” shall mean, for any period, all sustainable income, computed in accordance with GAAP, derived from the ownership and operation of the Property from whatever source during such period, including, but not limited to, Rents, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, and other pass-through or reimbursements paid by tenants under the Leases of any nature, but excluding Rents from month-to-month tenants, tenants that are included in any Bankruptcy Action or tenants whose lease guarantors are included in any Bankruptcy Action, Extraordinary Lease Payments, sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, Net Proceeds (other than business or rental interruption or other loss of income insurance), unforfeited security deposits, utility and other similar deposits and any disbursements to Borrower from the Reserve Funds, if any.

“**Guarantor**” shall mean Consolidated-Tomoka Land Co., a Florida corporation.

“**Guaranty**” shall mean that certain Guaranty of Recourse Obligations, dated as of the date hereof, executed by Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Hazardous Substances**” shall have the meaning set forth in the Environmental Indemnity.

“**Hilton**” shall mean Hilton Resorts Corporation, a Delaware corporation.

“**Hilton Allowance**” shall mean an amount up to \$723,000.00, to be made available to Hilton pursuant to the Hilton Lease for tenant improvements with respect to the Hilton Space.

“**Hilton Allowance Account**” shall have the meaning set forth in Section 6.10.1 hereof.

“**Hilton Allowance Funds**” shall have the meaning set forth in Section 6.10.1 hereof.

“**Hilton Extraordinary Lease Payments**” shall have the meaning set forth in Section 6.6.1(b) hereof.

“**Hilton Lease**” shall mean, individually and/or collectively, as the context may require, (i) that certain Office Lease dated August 5, 2011, and (ii) that certain Office Lease dated August 5, 2011, each by and among Borrower and Borrower’s predecessors-in-title, collectively, as landlord, and Hilton, as tenant, as the same have been amended and as may hereinafter be amended or supplemented.

“**Hilton Leasing Trigger Event**” shall mean the date which is nine (9) months prior to the expiration of the Hilton Lease unless Hilton has extended the Hilton Lease for the Hilton Renewal Term.

“**Hilton Renewal Term**” shall mean a term of not less than five (5) years.

“**Hilton Rollover Account**” shall have the meaning set forth in Section 6.6.1(a) hereof.

“**Hilton Rollover Funds**” shall have the meaning set forth in Section 6.6.1(a) hereof.

“**Hilton Space**” shall mean the tenant space located at the Property that is demised to Hilton pursuant to the Hilton Lease.

“**Hilton Space Re-tenanting Event**” shall mean the re-tenanting of all or a portion of the Hilton Space by one or more substitute tenants reasonably acceptable to Lender pursuant to one or more Leases reasonably acceptable to Lender, subject to the following conditions precedent: (i) such substitute tenant or tenants (v) are conducting normal business operations at the entire Hilton Space, (w) are not the subject of any Bankruptcy Action, (x) are paying full rental under the applicable Lease or Leases, (y) are in full compliance with the terms and conditions of the applicable Lease or Leases, and (z) have executed and delivered estoppel certificates acceptable to Lender; and (ii) all tenant improvement costs, leasing commissions and other material costs and expenses associated with re-letting the Hilton Space have been paid in full.

“**Hilton Trigger Event**” shall mean the occurrence of:

- (i) an event of default under any Hilton Lease beyond applicable notice and cure periods;

(ii) Hilton fails to be in actual physical occupancy of the Hilton Space, fails to be open to the public for business during customary business hours and/or “going dark” in the Hilton Space;

(iii) (A) on or prior to the date Hilton is required under the Hilton Lease to notify Borrower in writing of its election to extend or renew the Hilton Lease, Hilton fails to give such notice that it is intending to extend or renew the Hilton Lease for the Hilton Renewal Term, or (B) Hilton gives notice to Borrower that it is terminating the Hilton Lease for all or a portion of the Hilton Space. Notwithstanding the foregoing, it shall not be a Hilton Trigger Event if Hilton exercises the Termination Right with respect to the Terminated Space and Borrower deposits the Termination Fee with Lender pursuant to Section 6.9.1 hereof;

(iv) any Bankruptcy Action of Hilton or the insolvency of Hilton (and, if applicable, any guarantor of the Hilton Lease); or

(v) the Hilton Leasing Trigger Event.

“**Hilton Trigger Event Cure**” shall mean:

(i) if the Hilton Trigger Event is caused solely by the occurrence of clause (i) in the definition of “Hilton Trigger Event,” Borrower has provided to Lender evidence reasonably satisfactory to Lender (which can include a duly executed estoppel certificate from Hilton) that Hilton has cured all defaults under the Hilton Lease;

(ii) if the Hilton Trigger Event is caused solely by the occurrence of clause (ii) in the definition of “Hilton Trigger Event,” Borrower has provided to Lender evidence reasonably satisfactory to Lender (which can include a duly executed estoppel certificate from Hilton) that Hilton is in actual, physical possession and occupancy of (and re-commenced its operations at) the space demised to Hilton under the Hilton Lease, Hilton is open to the public for business during customary hours, not “dark” in the space demised to Hilton under the Hilton Lease and paying full unabated Rent without offset;

(iii) if the Hilton Trigger Event is caused solely by the occurrence of clause (iii) in the definition of “Hilton Trigger Event,” Hilton has revoked and rescinded in writing all termination or cancellation notices with respect to the Hilton Lease and has re-affirmed the Hilton Lease as being in full force and effect without any default thereunder;

(iv) if the Hilton Trigger Event is caused solely by the occurrence of clause (iv) in the definition of “Hilton Trigger Event,” Hilton or any guarantor of the Hilton Lease is no longer insolvent or subject to any Bankruptcy Action and has affirmed each Hilton Lease pursuant to a final, non-appealable order of a court of competent jurisdiction, provided that Hilton is then actively paying all rent and other amounts due under each Hilton Lease; and

(v) if the Hilton Trigger Event is caused solely by the occurrence of either clauses (iii) or (v) in the definition of “Hilton Trigger Event”, provided that the space demised to Hilton pursuant to the Hilton Lease as of the Closing Date is occupied by

Hilton or a replacement tenant and Borrower has provided to Lender evidence reasonably satisfactory to Lender (which can include a duly executed estoppel certificate from Hilton) of either (a) an Acceptable Hilton Lease Extension or (b) a Hilton Space Re-tenanting Event and Borrower provides to Lender evidence reasonably satisfactory to Lender (which can include a duly executed estoppel certificate from such third party Tenant or Tenants) that such third party Tenant or Tenants is/are in actual, physical occupancy, open for business to the public and paying full unabated Rent without offset or abatement.

provided that each Hilton Trigger Event Cure set forth above shall be subject to the following conditions: (1) after giving effect to such Hilton Trigger Event Cure, no Cash Sweep Event or other Hilton Trigger Event shall have occurred and remain outstanding, and (2) Borrower shall have paid all of Lender's reasonable costs and expenses incurred in connection with such Hilton Trigger Event Cure (including reasonable attorneys' fees and expenses).

"Improvements" shall have the meaning set forth in the granting clause of the Security Instrument.

"Indebtedness" shall mean, for any Person, without duplication: (i) all indebtedness or liability of such Person (including, without limitation, for borrowed money, for amounts drawn under a letter of credit, or for deferred purchase price of property or services (including trade obligations) for which such Person or its assets is liable), (ii) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (iii) all amounts required to be paid by such Person pursuant to any agreement to purchase, to provide funds for payment, to supply funds, or to invest in any Person, (iv) all indebtedness or liabilities guaranteed by such Person, directly or indirectly, (v) all obligations under leases that constitute capital leases for which such Person is liable, and (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures any other Person against loss.

"Indemnified Liabilities" shall have the meaning set forth in Section 11.13(b) hereof.

"Insurance Account" shall have the meaning set forth in Section 6.3.1 hereof.

"Insurance Funds" shall have the meaning set forth in Section 6.3.1 hereof.

"Insurance Premiums" shall have the meaning set forth in Section 5.1.1(b) hereof.

"Insurance Proceeds" shall mean the amount of all insurance proceeds paid under the Policies.

"Interest Period" shall mean, with respect to any Monthly Payment Date, the period commencing on the eleventh (11th) day of the preceding calendar month and terminating on the tenth (10th) day of the calendar month in which such Monthly Payment Date occurs; provided, however, that the initial Interest Period shall begin on the Closing Date and shall end on the immediately following tenth (10th) day of a calendar month.

“**Interest Rate**” shall mean a rate per annum equal to 3.6555%.

“**Key Principal**” shall mean Consolidated-Tomoka Land Co., a Florida corporation.

“**Land**” shall have the meaning set forth in the granting clause of the Security Instrument.

“**Lease**” shall mean any lease, sublease, subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, letting, license, concession or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“**Legal Requirements**” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees, demands and injunctions of Governmental Authorities affecting the Loan, any Secondary Market Transactions with respect to the Loan, Borrower, Guarantor or the Property or any part thereof or the ownership, construction, alteration, use, management or operation of the Property or any part thereof, whether now or hereafter enacted and in force, including, without limitation, the Securities Act, the Exchange Act, Regulation AB, the rules and regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, zoning and land use laws and the Americans with Disabilities Act of 1990, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, Guarantor or the Property or any part thereof, including, without limitation, any which may (i) require repairs, modifications or alterations in or to the Property or any part thereof or (ii) in any way limit the use and enjoyment thereof.

“**Lender**” shall have the meaning set forth in the introductory paragraph hereto.

“**Lender Indemnitees**” shall mean (i) Lender and any designee of Lender, (ii) any Affiliate of Lender that has filed any registration statement relating to a Securitization or has acted as the sponsor or depositor in connection with such Securitization, (iii) any Affiliate of Lender that acts as an underwriter, placement agent or initial purchaser in connection with a Securitization, (iv) any other co-underwriters, co-placement agents or co-initial purchasers in connection with a Securitization, (v) each Person who controls (within the meaning of Section 15 of the Exchange Act) any Person described in any of the foregoing clauses, (vi) any Person who is or will have been involved in the origination of the Loan, (vii) any Person who is or will have been involved in the servicing of the Loan, (viii) any Person in whose name the Lien created by the Security Instrument and the other Loan Documents are or will be recorded or filed, (ix) any Person who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan

evidenced for the benefit of third parties), (x) any Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan, (xi) any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business and (xii) the respective officers, directors, shareholders, partners, members, employees, agents, representatives, contractors, subcontractors, Affiliates, participants, successors and assigns of any Person described in any of the foregoing clauses.

"Lien" shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, assignment, security interest, easement, restrictive covenant, preference, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing affecting (i) all or any portion of the Property or any interest therein or (ii) any direct or indirect interest in Borrower or Sole Member, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialman's and other similar liens and encumbrances.

"Loan" shall mean the loan in the original principal amount of **SEVEN MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,300,000.00)** made by Lender to Borrower pursuant to this Agreement.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Guaranty, the Environmental Indemnity, the O&M Agreement, the Assignment of Management Agreement, the Cash Management Agreement, the Clearing Account Agreement, and all other documents, agreements, certificates and instruments now or hereafter executed and/or delivered in connection with the Loan.

"Loan-to-Value Ratio" shall mean a ratio, as determined by Lender as of a particular date, in which: (i) the numerator is equal to the Outstanding Principal Balance and (ii) the denominator is equal to the appraised value of the Property based on an Appraisal.

"Major Lease" shall mean any Lease which (i) either individually or when taken together with any other Lease with the same Tenant or any Affiliate of such Tenant, and assuming the exercise of all expansion rights and preferential rights to lease additional space contained in such Lease or Leases, (a) covers or is expected to cover more than 26,783 square feet at the Property or (b) requires the payment of base rent in an amount equal to or exceeding twenty percent (20%) of the Gross Income from Operations, (ii) contains an option or preferential right to purchase all or any portion of the Property, (iii) is with an Affiliate of Borrower, Guarantor or Manager as Tenant, (iv) is entered into during the continuation of an Event of Default or any other Cash Sweep Event, or (iv) is entered into with any Tenant identified by Lender as a "major tenant" of the Property.

"Management Agreement" shall mean that certain Management Agreement dated as of January 31, 2013, between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms and provisions of this Agreement, or, if the context requires, the Replacement Management Agreement executed in accordance with the terms and provisions of this Agreement.

“**Manager**” shall mean Highwoods Realty Limited Partnership, a North Carolina limited partnership, or, if the context requires, a Qualified Manager that manages the Property in accordance with the terms and provisions of this Agreement and the other Loan Documents pursuant to a Replacement Management Agreement.

“**Material Adverse Effect**” shall mean any material adverse effect upon (i) the business operations, economic performance, assets, condition (financial or otherwise), equity, contingent liabilities, prospects, material agreements or results of operations of Borrower, Guarantor or the Property, (ii) the ability of Borrower or Guarantor to perform its obligations under any Loan Document to which it is a party, (iii) the enforceability or validity of any Loan Document, the perfection or priority of any Lien created under any Loan Document or the rights, interests and remedies of Lender under any Loan Document or (iv) the value, use or operation of the Property or the cash flows from the Property.

“**Material Agreements**” shall mean (i) each management, brokerage or leasing agreement (other than the Management Agreement), and (ii) any cleaning, maintenance, service or other contract or agreement of any kind (other than the Leases) of a material nature (materiality for purposes of this definition shall include, without limitation, any contract with a term longer than one year or any contract that is not cancelable on thirty (30) days’ or less notice without the payment of any termination fee or payments of any kind), in either case relating to the ownership, development, leasing, management, use, operation, maintenance, repair, improvement or restoration of the Property, whether written or oral.

“**Maturity Date**” shall mean the date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or in the other Loan Documents, under the laws of such Governmental Authorities whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**Minimum Disbursement Amount**” shall mean Twenty-Five Thousand and No/100 Dollars (\$25,000).

“**Monthly Capital Expenditure Deposit**” shall have the meaning set forth in [Section 6.4.1](#) hereof.

“**Monthly Debt Service Payment Amount**” shall mean an amount equal to interest only in an amount of Twenty Two Thousand Five Hundred Sixty-One and 92/100 Dollars (\$22,561.92), which is scheduled to accrue on the Loan through the end of the Interest Period in which such Monthly Payment Date occurs.

“**Monthly Hilton Rollover Deposit**” shall have the meaning set forth in Section 6.6.1 hereof.

“**Monthly Insurance Deposit**” shall have the meaning set forth in Section 6.3.1 hereof.

“**Monthly Payment Date**” shall mean the third (3rd) day of every calendar month occurring during the Term commencing with April 3, 2013; provided, however, that Lender shall have the right to change the Monthly Payment Date to any other day of a calendar month selected by Lender, in its sole and absolute discretion (including in connection with a Securitization) upon notice to Borrower (in which event such change shall then be deemed effective) and, if requested by Lender, Borrower shall promptly execute an amendment to this Agreement to evidence such change; provided that if Lender shall have elected to change the Monthly Payment Date as aforesaid, Lender shall have the option, but not the obligation, to adjust the Interest Period accordingly.

“**Monthly Rollover Deposit**” shall have the meaning set forth in Section 6.5.1 hereof.

“**Monthly Tax Deposit**” shall have the meaning set forth in Section 6.2.1 hereof.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Net Cash Flow**” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“**Net Operating Income**” shall mean, for any period, the amount obtained by subtracting Operating Expenses for such period from Gross Income from Operations for such period.

“**Net Proceeds**” shall mean: (i) the net amount of all Insurance Proceeds, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees), if any, in collecting such Insurance Proceeds; provided that, for purposes of Section 5.3 hereof, “Net Proceeds” shall mean such net amount of Insurance Proceeds to the extent received by Lender pursuant to the Policies required under Sections 5.1.1(a)(i), (iv), (vi), (xi) and (xii) as a result of the applicable Casualty, or (ii) the net amount of the Award, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees), if any, in collecting such Award.

“**Net Proceeds Deficiency**” shall have the meaning set forth in Section 5.3.2(f) hereof.

“**Note**” shall mean that certain Promissory Note, dated the date hereof, in the stated principal amount of **SEVEN MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$7,300,000.00)**, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Notice**” shall have the meaning set forth in Section 11.6 hereof.

“**NRSRO**” shall mean any credit rating agency that has elected to be treated as a nationally recognized statistical rating organization for purposes of Section 15E of the Exchange

Act, without regard to whether or not such credit rating agency has been engaged by Lender or other Securitization Indemnified Parties in connection with, or in anticipation of, a Securitization.

“**O&M Agreement**” shall mean that certain Operations and Maintenance Agreement, dated as of the date hereof, between Borrower and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**OFAC**” shall mean the Office of Foreign Assets Control or, if the context requires, any successor Governmental Authority.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized senior officer of Sole Member.

“**Open Prepayment Commencement Date**” shall mean the Monthly Payment Date that occurs six (6) months prior to the Stated Maturity Date.

“**Operating Agreements**” shall mean, collectively, the REA and any other covenants, restrictions or agreements of record relating to the construction, operation or use of the Property.

“**Operating Expenses**” shall mean, for any period, the total of all expenditures, computed in accordance with GAAP, of whatever kind during such period relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including, without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation and amortization, Debt Service, Capital Expenditures, and contributions to the Reserve Funds.

“**Organizational Documents**” shall mean, as to any Person, the organizational or governing documents of such Person, including the certificate of incorporation and by-laws with respect to a corporation; the certificate of formation or organization and operating agreement with respect to a limited liability company; and the certificate of limited partnership and partnership agreement with respect to a limited partnership.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions (other than Taxes), and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Obligations**” shall mean: (i) all obligations of Borrower contained in this Agreement, the Note or any other Loan Document, and (ii) all obligations of Borrower contained in any renewal, extension, amendment, restatement, modification, consolidation, change of, or substitution or replacement for all or any part of this Agreement, the Note or any other Loan Document, excluding, in each case, Borrower’s obligation for the payment of the Debt.

“**Outstanding Principal Balance**” shall mean, as of any date, the outstanding principal balance of the Loan.

“**Patriot Act**” shall mean, collectively, all laws relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56), as the same may be amended, replaced, supplemented or otherwise modified from time to time.

“**Patriot Act Offense**” shall mean (i) any violation of the laws of the United States of America or of any of the several states, or any act or omission that would constitute a violation of such laws if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or money laundering, including any offense under (a) the laws against terrorism; (b) the laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or (e) the Patriot Act, or (ii) the conspiracy to commit, or aiding and abetting another to commit, any violation of any such laws.

“**Permitted Encumbrances**” shall mean, collectively, (i) the Liens and security interests created by the Loan Documents, (ii) all Liens, encumbrances and other matters expressly set forth on Schedule A or Schedule B of the Title Insurance Policy and otherwise acceptable to Lender in its sole discretion, (iii) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (iv) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion.

“**Permitted Investments**” shall have the meaning set forth in the Cash Management Agreement.

“**Permitted Release Date**” shall mean the earlier to occur of (i) the third (3rd) anniversary of the first (1st) Monthly Payment Date and (ii) the Defeasance Lockout Expiration Date.

“**Permitted Transfer**” shall mean any of the following: (i) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto, (ii) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto, (iii) any Lease of space in the Improvements to Tenants in accordance with the terms and provisions of [Section 4.1.9](#) hereof, (iv) any sale or transfer of any stock or other security (including options, warrants and the like) in Sole Member provided that Sole Member continues to own one hundred percent (100%) of the membership interests in Borrower, and (v) any Transfer permitted without Lender’s prior consent in accordance with the terms and provisions of [Section 8.2](#) hereof.

“**Person**” shall mean any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other entity, any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

“**Policies**” or “**Policy**” shall have the meaning set forth in [Section 5.1.1\(b\)](#) hereof.

“Prepayment Date” shall mean the date on which the Loan is prepaid in accordance with the terms hereof.

“Prohibited Person” shall mean any Person:

(i) listed in the Annex to, or is otherwise subject to the prohibitions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Executive Orders;

(ii) that is owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the prohibitions of, Executive Order No. 13224;

(iii) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including Executive Order No. 13224;

(iv) who commits, threatens, conspires to commit or supports “terrorism” as defined in Executive Order No. 13224;

(v) that is named as a “specially designated national and blocked person” on the most current list published by OFAC at its official website or at any replacement website or other replacement official publication of such list;

(vi) that is subject to trade restrictions under United States law, including, without limitation, the Patriot Act, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder;

(vii) that is listed on any Government List;

(viii) that has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense;

(ix) that is currently under investigation by any Governmental Authority for alleged criminal activity; or

(x) who is an Affiliate of any Person that is described by or that satisfies any of clauses (i) through (ix) above.

“Property” shall mean the parcel of real property, the Improvements now or hereafter erected, situated or installed thereon and all personal property owned by Borrower and encumbered by the Security Instrument, together with all rights pertaining to such property (real and personal) and the Improvements, all as more particularly described in the granting clauses of the Security Instrument.

“**Qualified Manager**” shall mean (i) Manager or (ii) a reputable and experienced manager (which may be an Affiliate of Borrower) which, in the reasonable judgment of Lender, possesses experience in managing properties similar in location, size, class, use, operation and value as the Property; provided, that Borrower shall have obtained (a) a Rating Agency Confirmation from the Rating Agencies (if so required by the Rating Agencies) and (b) if such Person is an Affiliate of Borrower, a new bankruptcy non-consolidation opinion reasonably acceptable to Lender and acceptable the Rating Agencies in their sole discretion.

“**Rating Agencies**” shall mean, prior to the final Securitization of the Loan, each of S&P, Moody’s, Fitch, Realpoint LLC and DBRS, Inc. or any other nationally-recognized statistical rating agency which has been designated by Lender and, after the final Securitization of the Loan, shall mean any of the foregoing that has rated any of the Securities.

“**Rating Agency Confirmation**” shall mean, collectively, a written affirmation from each of the Rating Agencies that the rating of the Securities (or any class thereof) 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, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. In the event that, at any given time, no Rating Agency has elected to consider whether to grant or withhold such an affirmation, then the term “Rating Agency Confirmation” shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation; *provided* that the foregoing shall be inapplicable in any case in which Lender has an independent approval right in respect of the matter at issue pursuant to the terms of this Agreement.

“**REA**” shall mean that certain Master Declaration of Protective Covenants and Restrictions for Metrowest and that certain Declaration of Easements, Covenants, Conditions and Restrictions for Metrocenter, each as more specifically described on Schedule IV hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms and provisions of this Agreement.

“**Regulation AB**” shall mean Regulation AB under the Securities Act and the Exchange Act, as such regulation may be amended from time to time.

“**Regulation S-K**” means Regulation S-K of the Securities Act, as such regulation may be amended from time to time.

“**Regulation S-X**” means Regulation S-X of the Securities Act, as such regulation may be amended from time to time.

“**Related Loan**” shall mean (i) a loan made to an Affiliate of Borrower or Guarantor or secured by a Related Property that is included in a Securitization with the Loan or any portion thereof or interest therein or (ii) any loan that is cross-collateralized or cross-defaulted with the Loan.

“**Related Property**” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related” within the meaning of the definition of “Significant Obligor” to the Property.

“**REMIC Trust**” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note or any interest therein.

“**Rents**” shall mean all rents (including, without limitation, percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, Extraordinary Lease Payments, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or the benefit of Borrower, Manager or any of their respective agents or employees from any and all sources arising from or attributable to the Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, Manager or any of their respective agents or employees, and the Insurance Proceeds, if any, from business or rental interruption or other loss of income insurance, but only to the extent Lender elects to treat such Insurance Proceeds as business or rental interruption Insurance Proceeds in accordance with Section 5.2.3 hereof.

“**Replacement Management Agreement**” shall mean, collectively, (i)(a) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (b) a management agreement with a Qualified Manager, which management agreement shall be in form and substance reasonably acceptable to Lender; provided, that, with respect to this clause (b), Lender, at its option, may require that Borrower shall have obtained a Rating Agency Confirmation from the Rating Agencies (if so required by the Rating Agencies), and (ii) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or in such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager.

“**Required Repair Account**” shall have the meaning set forth in Section 6.1.1 hereof.

“**Required Repair Funds**” shall have the meaning set forth in Section 6.1.1 hereof.

“**Required Repairs**” shall have the meaning set forth in Section 6.1.1 hereof.

“**Reserve Funds**” shall mean, collectively, the Required Repair Funds, the Tax Funds, the Insurance Funds, the Capital Expenditure Funds, the Rollover Funds, the Hilton Rollover Funds, the Termination Funds, the Hilton Allowance Funds, the Excess Cash Flow Funds and any other escrow or reserve fund established by the Loan Documents.

“**Restoration**” shall mean the repair and restoration of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“**Restoration Threshold**” shall mean \$250,000.

“**Restricted Party**” shall mean, collectively, (i) Borrower, Sole Member, Guarantor and any Affiliated Manager, and (ii) any shareholder, partner, member, non-member manager or any other direct or indirect legal or beneficial owner of Borrower, Sole Member, Guarantor, any Affiliated Manager, or any non-member manager.

“**Rollover Account**” shall have the meaning set forth in [Section 6.5.1](#) hereof.

“**Rollover Funds**” shall have the meaning set forth in [Section 6.5.1](#) hereof.

“**S&P**” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“**Scheduled Defeasance Payments**” shall have the meaning set forth in the definition of the term “Defeasance Collateral”.

“**Secondary Market Transaction**” shall have the meaning set forth in [Section 9.1\(a\)](#) hereof.

“**Securities**” shall have the meaning set forth in [Section 9.1\(a\)](#) hereof.

“**Securities Act**” shall have the meaning set forth in [Section 9.2\(a\)](#) hereof.

“**Securitization**” shall have the meaning set forth in [Section 9.1\(a\)](#) hereof.

“**Securitization Indemnification Liabilities**” shall have the meaning set forth in [Section 9.2\(b\)](#) hereof.

“**Securitization Indemnified Parties**” shall have the meaning set forth in [Section 9.2\(b\)](#) hereof.

“**Securitization Vehicle**” means each REMIC Trust or Grantor Trust into which all or a portion of the Loan or an interest therein has been transferred.

“**Security Instrument**” shall mean that certain first priority Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicer**” shall have the meaning set forth in [Section 11.24\(a\)](#) hereof.

“**Servicing Agreement**” shall have the meaning set forth in [Section 11.24\(a\)](#) hereof.

“**Severed Loan Documents**” shall have the meaning set forth in [Section 10.2\(c\)](#) hereof.

“**Significant Obligor**” shall have the meaning set forth in Item 1101(k) of Regulation AB under the Securities Act.

“**Sole Member**” shall mean Consolidated-Tomoka Land Co., a Florida corporation, the sole member of Borrower.

“**Springing Recourse Event**” shall have the meaning set forth in Section 11.22 hereof.

“**State**” shall mean the State or Commonwealth in which the Property or any part thereof is located.

“**Stated Maturity Date**” shall mean March 3, 2018; provided, however, that, in the event Lender changes the Monthly Payment Date in accordance with this Agreement, the Stated Maturity Date shall also be deemed to have been changed such that the Stated Maturity Date and the Monthly Payment Date shall occur on the same calendar day and, if requested by Lender, Borrower shall promptly execute an amendment to this Agreement to evidence such change.

“**Successor Borrower**” shall have the meaning set forth in Section 2.5.3 hereof.

“**Survey**” shall mean a current land survey for the Property, certified to the title insurance company and Lender and its successors and assigns, in form and substance satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the most current Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys together with the surveyor’s seal affixed to the Survey and a certification from the surveyor in form and substance acceptable to Lender.

“**Tax Account**” shall have the meaning set forth in Section 6.2.1 hereof.

“**Tax Funds**” shall have the meaning set forth in Section 6.2.1 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or any part thereof, together with all interest and penalties thereon.

“**Tenant**” shall mean any Person obligated by contract or otherwise to pay monies (including a percentage of gross income, revenue or profits) under any Lease now or hereafter affecting all or any part of the Property.

“**Term**” shall mean the term of the Loan.

“**Terminated Space**” shall mean 38.75% of the Hilton Space.

“**Terminated Space Re-Tenancing Event**” shall mean the re-tenancing of all or a portion of the Terminated Space by one or more substitute tenants reasonably acceptable to Lender pursuant to one or more Leases reasonably acceptable to Lender, subject to the following conditions precedent: (i) such substitute tenant or tenants (v) are conducting normal business operations at the entire Terminated Space, (w) are not the subject of any Bankruptcy Action, (x) are paying full rental under the applicable Lease or Leases, (y) are in full compliance with the

terms and conditions of the applicable Lease or Leases, and (z) have executed and delivered estoppel certificates acceptable to Lender; and (ii) all tenant improvement costs, leasing commissions and other material costs and expenses associated with re-letting the Terminated Space have been paid in full.

“**Termination Account**” shall have the meaning set forth in Section 6.9.1 hereof.

“**Termination Fee**” shall mean a fee equal to One Million Six Hundred Thirty Thousand and No/100 Dollars (\$1,630,000.00).

“**Termination Funds**” shall have the meaning set forth in Section 6.9.1 hereof.

“**Termination Right**” shall mean Hilton’s right to terminate the Hilton Lease with respect to the Terminated Space in accordance with the terms and conditions of the Hilton Lease.

“**Title Insurance Policy**” shall mean an ALTA mortgagee title insurance policy in the form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to the Property and insuring the Lien of the Security Instrument, together with such endorsements and affirmative coverages as Lender may require.

“**Transfer**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Transferee**” shall have the meaning set forth in Section 8.1(g) hereof.

“**Transferee’s SPE Constituent Entity**” shall mean, with respect to any Transferee, the entity that qualifies as a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies that is (i) the general partner of such Transferee, if such Transferee is a limited partnership, or (ii) the managing member of such Transferee, if such Transferee is a multi-member limited liability company.

“**Transferee’s Sponsors**” shall mean, with respect to any Transferee, such Transferee’s shareholders, general partners or managing members that, directly or indirectly, (i) own fifty-one percent (51%) or more of legal, beneficial and economic interests in such Transferee and (ii) are in control of such Transferee. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Treasury Note Rate**” shall mean, at the time of the prepayment, as applicable, the rate of interest per annum equal to the yield to maturity (converted by Lender to the equivalent monthly yield using Lender’s then system of conversion) of the United States Treasury obligations selected by the holder of the Note having maturity dates closest to, but not exceeding, the remaining term to the Open Prepayment Commencement Date.

“**Trustee**” shall mean any trustee of a Securitization Vehicle.

“**UBSRESI**” shall mean UBS Real Estate Securities Inc., a Delaware corporation, and its successors in interest.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State of New York or, if the context requires, in the State.

“**Updated Information**” shall have the meaning set forth in Section 9.1(b)(i), hereof.

“**U.S. Bankruptcy Code**” shall mean Title 11 of the United States Code entitled “Bankruptcy”, as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder.

“**U.S. Obligations**” shall mean (i) direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption or (ii) to the extent acceptable to the Rating Agencies, other “government securities” within the meaning of Treasury Regulations Section 1.860G-2(a)(8) (ii) of the Investment Company Act of 1940, as amended.

“**Yield Maintenance Default Premium**” shall mean an amount equal to the greater of: (i) five percent (5%) of the principal amount of the Loan being prepaid and (ii) the excess, if any, of (a) the present value (determined using a discount rate equal to the Treasury Note Rate at such time) of all scheduled payments of principal and interest payable in respect of the principal amount of the Loan being prepaid provided that the Note shall be deemed, for purposes of this definition, to be due and payable on the Open Prepayment Commencement Date, over (b) the principal amount of the Loan being prepaid.

“**Yield Maintenance Premium**” shall mean an amount equal to the greater of: (i) one percent (1%) of the principal amount of the Loan being prepaid and (ii) the excess, if any, of (a) the present value (determined using a discount rate equal to the Treasury Note Rate at such time) of all scheduled payments of principal and interest payable in respect of the principal amount of the Loan being prepaid provided that the Note shall be deemed, for purposes of this definition, to be due and payable on the Open Prepayment Commencement Date, over (b) the principal amount of the Loan being prepaid.

Section 1.2. Principles of Construction.

All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation,” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. 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.

II. THE LOAN

Section 2.1. The Loan.

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender shall make the Loan to Borrower and Borrower shall accept the Loan from Lender on the Closing Date.

2.1.2 Single Disbursement to Borrower. Borrower shall receive only one (1) borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

2.1.3 The Note. The Loan shall be evidenced by the Note and shall be repaid in accordance with the terms of this Agreement and the Note.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) repay any costs incurred in connection with the acquisition of the Property and/or repay and discharge any existing loans relating to the Property, (b) pay all past-due Basic Carrying Costs, if any, in respect of the Property, (c) deposit the Reserve Funds, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Property, as approved by Lender, and (f) distribute the balance of the proceeds, if any, to Borrower.

Section 2.2. Interest Rate.

2.2.1 Interest Rate. Interest on the Outstanding Principal Balance shall accrue and be payable from the Closing Date up to and including the end of the last Interest Period in which the Maturity Date occurs at the Interest Rate.

2.2.2 Default Rate. In the event that, and for so long as, any Event of Default has occurred and remains outstanding, the Outstanding Principal Balance and, to the extent permitted by law, overdue interest in respect of the Loan, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.3 Interest Calculation. Interest on the Outstanding Principal Balance shall be calculated by multiplying (a) the actual number of days in the period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the Outstanding Principal Balance.

2.2.4 Usury Savings. This Agreement and the other Loan Documents are subject to the express condition that at no time shall Borrower be required or obligated to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be

immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan shall, to the extent permitted by the applicable Legal Requirements, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3. Loan Payments.

2.3.1 Payment Before Maturity Date. Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount on the Monthly Payment Date occurring in April, 2013 and on each Monthly Payment Date thereafter to and including the Maturity Date.

2.3.2 Intentionally Omitted.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the Outstanding Principal Balance, all interest which has accrued or would accrue through and including the last day of the Interest Period in which the Maturity Date occurs and all other amounts due hereunder and under the Note and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents (including the Outstanding Principal Balance due and payable on the Maturity Date if the same is not paid within three (3) days of the Maturity Date) is not paid by Borrower within three (3) days following the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (a) five percent (5%) of such unpaid sum or (b) the maximum amount permitted by applicable law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Security Instrument and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement, the Note and the other Loan Documents shall be made to Lender not later than 1:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

(b) Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, the due date thereof shall be the first (1st) Business Day that is immediately preceding such due date (notwithstanding such adjustment of due dates, Borrower shall not be entitled to any deduction of interest due under this Agreement, the Note or any of the other Loan Documents).

(c) All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.4. Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part. Subject to Sections 2.4.3 and 2.4.4 hereof, on and after the Open Prepayment Commencement Date, Borrower may, at its option and upon thirty (30) days' prior notice to Lender (which notice shall specify the proposed Prepayment Date), prepay the Debt in whole (but not in part), on any date. Any prepayment received by Lender shall be accompanied by (a) all interest which would have accrued on the amount of the Loan to be prepaid through and including the last day of the Interest Period related to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period related to such Monthly Payment Date) and (b) all other sums due and payable under this Agreement, the Note, and the other Loan Documents. If a notice of prepayment is given by Borrower to Lender pursuant to this Section 2.4.1, the amount designated for prepayment and all other sums required under this Section 2.4 shall be due and payable on the proposed Prepayment Date.

2.4.2 Mandatory Prepayments. On each date on which Lender actually receives any Net Proceeds, and if Lender is not obligated to and elects not to make such Net Proceeds available to Borrower for a Restoration in accordance with this Agreement, Lender may, at its option, prepay all or a portion of the Debt in an amount equal to one hundred percent (100%) of such Net Proceeds; provided that, if an Event of Default has occurred and remains outstanding, Lender may apply such Net Proceeds to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion. Any prepayment received by Lender in accordance with this Section 2.4.2 shall be (a) accompanied by (i) all interest which would have accrued on the amount of the Loan to be prepaid through and including the last day of the Interest Period related to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period related to such Monthly Payment Date) and (ii) all other sums due and payable under this Agreement, the Note, and the other Loan Documents and (b) subject to Sections 2.4.3 and 2.4.4 hereof.

2.4.3 Prepayments After Default. If, during the continuation of any Event of Default, prepayment of all or any part of the Debt is tendered by Borrower (which tender Lender may reject to the extent permitted by the applicable Legal Requirements), a purchaser at foreclosure or any other Person, Borrower, such purchaser at foreclosure or other Person shall pay, in addition to the amount of the Loan to be prepaid, (a) an amount equal to the Yield Maintenance Default Premium, (b) all interest which would have accrued on the amount of the Loan to be prepaid through and including the last day of the Interest Period related to the Monthly Payment Date next occurring following the date of such prepayment (or, if such

prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period related to such Monthly Payment Date), and (c) all other sums due and payable under the Loan Documents.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Lockout Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) upon not less than thirty (30) days' prior notice to Lender specifying the Monthly Payment Date on which prepayment is to be made; provided that (a) no Event of Default has occurred and remains outstanding and (b) such prepayment shall be accompanied by (i) the Yield Maintenance Premium, (ii) all interest which would have accrued on the amount of the Loan to be prepaid through and including the last day of the Interest Period related to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period related to such Monthly Payment Date), and (iii) all other sums due and payable under the Loan Documents. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If a notice of prepayment is given by Borrower to Lender pursuant to this Section 2.4.4, the Debt shall be due and payable on the proposed Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith.

Section 2.5. Defeasance.

2.5.1 Conditions to Defeasance. So long as no Event of Default has occurred and remains outstanding, Borrower shall have the right at any time after the Defeasance Lockout Expiration Date and prior to the Open Prepayment Commencement Date to voluntarily defease the entire Loan and obtain a release of the Lien of the Security Instrument (a "**Defeasance Event**"), subject to the satisfaction of the following conditions precedent:

(a) Borrower shall provide Lender not less than thirty (30) days' prior notice (or such shorter period of time if permitted by Lender in its sole discretion) specifying a Monthly Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(b) Borrower shall pay to Lender (i) the Monthly Debt Service Payment Amount due on the Defeasance Date and (ii) all other sums due and payable under this Agreement, the Note and the other Loan Documents;

(c) Borrower shall deposit the applicable Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Sections 2.5.2 and 2.5.3 hereof;

(d) Intentionally Omitted;

(e) Borrower shall execute and deliver to Lender a Defeasance Security Agreement in respect of the Defeasance Collateral Account and the Defeasance Collateral;

(f) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (i) Borrower has legally and

validly transferred and assigned the Defeasance Collateral and all rights and obligations under the Note to Successor Borrower, (ii) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral, (iii) if a Securitization has occurred, the Securitization Vehicle formed in connection with such Securitization will not fail to maintain its status as a Securitization Vehicle as a result of the Defeasance Event, (iv) the Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Note as indebtedness for federal income tax purposes, and (v) the delivery of the Defeasance Collateral and the grant of a security interest in the Defeasance Collateral Account and the Defeasance Collateral to Lender shall not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or any other Bankruptcy Law;

(g) If required by the Rating Agencies, Borrower shall deliver to Lender a bankruptcy non-consolidation opinion with respect to Successor Borrower reasonably acceptable to Lender and acceptable to the Rating Agencies in their sole discretion;

(h) Borrower shall deliver to Lender a Rating Agency Confirmation as to the Defeasance Event;

(i) Borrower shall deliver a certificate of a nationally recognized public accounting firm acceptable to Lender certifying that the Defeasance Collateral will generate amounts equal to or greater than the applicable Scheduled Defeasance Payment on or prior to each corresponding Monthly Payment Date or other scheduled payment date;

(j) Borrower shall deliver such other certificates, opinions, documents and instruments as Lender may reasonably request;

(k) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.5 have been satisfied; and

(l) Borrower shall pay all fees, costs and expenses incurred by Lender in connection with the Defeasance Event or otherwise required to accomplish the agreements set forth in this Section 2.5, including (i) reasonable attorneys' fees and expenses, (ii) the fees, costs and expenses of the Rating Agencies, (iii) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, and (iv) the fees, costs and expenses of Servicer and any Trustee. Simultaneously with the notice described in Section 2.5.1(a) above, Borrower shall deliver to Lender an amount reasonably determined by Lender to be sufficient to pay such fees, costs and expenses, which amount may be used by Lender to pay such fees, costs and expenses if a proposed Defeasance Event does not occur.

2.5.2 Defeasance Collateral Account. On or before the date on which Borrower delivers the Defeasance Collateral, Borrower shall open at an Eligible Institution the defeasance collateral account (the "**Defeasance Collateral Account**") which shall at all times be an Eligible Account. Each of the U.S. Obligations that constitutes a part of the Defeasance Collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the Eligible

Institution at which the Defeasance Collateral Account is to be maintained to effectuate book-entry transfers and pledges through the book-entry facilities of such Eligible Institution) in order to perfect, upon the delivery of the Defeasance Collateral, a first priority security interest therein in favor of Lender in conformity with all applicable Legal Requirements governing the granting of such security interest. The Defeasance Collateral Account shall contain only (a) the Defeasance Collateral and (b) cash from principal and interest paid on the Defeasance Collateral or other cash proceeds thereof. Pursuant to the Defeasance Security Agreement or other appropriate agreement or instrument, Borrower or Successor Borrower, as applicable, shall authorize and direct that all payments received from and all proceeds of the Defeasance Collateral be made or paid directly to the Cash Management Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service and, if applicable, other payment obligations of Borrower under the Note. Borrower or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued on the Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrower or Successor Borrower, as applicable, shall prepay all fees, costs and expenses associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account.

2.5.3 Successor Borrower. In connection with a Defeasance Event, Borrower shall establish a successor entity designated by Lender or, at Lender's option, a successor entity designated by Borrower (in each case, a "**Successor Borrower**") which (a) shall be a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies and (b) shall be approved by the Rating Agencies. Any Successor Borrower may, at Borrower's option, be an Affiliate of Borrower unless the Rating Agencies shall require otherwise. Borrower shall transfer and assign all rights and obligations under and to the Note, and the Defeasance Security Agreement, together with the Defeasance Collateral, to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Defeasance Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay a minimum of One Thousand and No/100 Dollars (\$1,000) to any Successor Borrower as consideration for assuming the obligations under the Note and the Defeasance Security Agreement. Borrower shall pay all fees, costs and expenses incurred by Lender and the Rating Agencies in connection therewith.

Section 2.6. Release of Property.

2.6.1 Release of Property. Except as set forth in [Section 2.5](#) and this Section 2.6, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Security Instrument on the Property.

(a) If Borrower has elected to defease the entire Loan and the requirements of Section 2.5 and this Section 2.6 have been fully satisfied, the Property shall be released from the Lien of the Security Instrument and the Defeasance Collateral Account and the Defeasance Collateral, pledged pursuant to the Defeasance Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Security Instrument, Borrower shall submit to Lender, concurrently with the notice under Section 2.5.1(a), a release of Lien (and the related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other certificates, documents and instruments Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all applicable Legal Requirements, and (ii) will effect such release in accordance with the terms of this Agreement.

2.6.2 Release on Payment in Full.

(a) Upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Loan Documents, upon the written request and at the sole cost and expense of Borrower, Lender shall release the Lien of the Security Instrument.

(b) In connection with the release of the Security Instrument, Borrower shall submit to Lender, concurrently with the request under Section 2.6.2(a), a release of Lien (and the related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other certificates, documents and instruments Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all applicable Legal Requirements, and (ii) will effect such release in accordance with the terms of this Agreement.

Section 2.7. Clearing Account/Cash Management Account.

2.7.1 Clearing Account.

(a) During the term of the Loan, Borrower shall establish and maintain an account (the "Clearing Account") with Clearing Bank in trust for the benefit of Lender in accordance with the Clearing Account Agreement. The Clearing Account shall be under the sole dominion and control of Lender. During a Cash Management Trigger Event Period, Lender and Servicer shall have the sole right to make withdrawals from the Clearing Account. Provided that no Cash Management Trigger Event Period is then in effect, Clearing Bank shall disburse all funds in the Clearing Account to Borrower in accordance with the Clearing Account Agreement. All costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower.

(b) Borrower shall cause all Rents to be delivered directly to the Clearing Account. In accordance with the Clearing Account Agreement, Borrower shall, or shall cause Manager to, deliver irrevocable written instructions to all tenants under Leases to deliver all Rents payable thereunder directly to the Clearing Account. Notwithstanding anything to the

contrary contained herein or in any other Loan Documents, in the event Borrower or Manager shall receive any amounts constituting Rents, Borrower shall, and shall cause Manager to, deposit all such amounts received by Borrower or Manager into the Clearing Account within one (1) Business Day after receipt thereof.

(c) Borrower shall obtain from Clearing Bank its agreement to transfer, from and after such time as Clearing Bank has received a Cash Management Activation Notice and until such time as Clearing Bank has received a Cash Management De-Activation Notice, all amounts on deposit in the Clearing Account to the Cash Management Account in immediately available funds by federal wire transfer once every Business Day.

(d) Upon the occurrence and during the continuation of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any amounts then on deposit in the Clearing Account to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion.

(e) The Clearing Account shall not be commingled with other monies held by Borrower or Clearing Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including reasonable attorneys' fees and expenses) arising from or in any way connected with the Clearing Account and/or the Clearing Account Agreement or the performance of the obligations for which the Clearing Account was established.

2.7.2 Cash Management Account.

(a) During the term of the Loan, Borrower shall establish and maintain a segregated Eligible Account (the "Cash Management Account") to be held by Cash Management Bank in trust and for the benefit of Lender in accordance with the Cash Management Agreement. The Cash Management Account shall be under the sole dominion and control of Lender. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account. All costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) Provided that no Event of Default shall have occurred and remain outstanding, on each Business Day during a Cash Management Trigger Event Period, all funds on deposit in the Cash Management Account shall be applied in the following amounts and order of priority:

(i) First funds sufficient to pay the next monthly deposit to the Tax Funds in accordance with the terms and conditions of Section 6.2 hereof;

- (ii) Second, funds sufficient to pay the next monthly deposit to the Insurance Funds in accordance with the terms and conditions of Section 6.3 hereof;
- (iii) Third, funds sufficient to pay the fees and expenses of Cash Management Bank then due and payable to Cash Management Bank in accordance with the Cash Management Agreement;
- (iv) Fourth, funds sufficient to pay the next Monthly Debt Service Payment Amount;
- (v) Fifth, funds sufficient to pay the next monthly deposit to the Capital Expenditure Funds in accordance with the terms and conditions of Section 6.4 hereof;
- (vi) Sixth, upon the occurrence of a Hilton Trigger Event, funds sufficient to pay the next monthly deposit to the Rollover Funds in accordance with the terms and conditions of Section 6.5 hereof;
- (vii) Seventh, funds sufficient to pay any interest accruing at the Default Rate (without duplication with clause (iv) above), late payment charges and any other amounts then due and payable under the Loan Documents;
- (viii) Eighth, funds sufficient to pay for Operating Expenses for the applicable period incurred in accordance with an Approved Annual Budget and as set forth in a request for payment submitted by Borrower to Lender specifying the individual Operating Expenses in form and substance reasonably acceptable to Lender;
- (ix) Ninth, funds sufficient to pay for Extraordinary Expenses for the applicable period approved by Lender, if any;
- (x) Tenth, in the event the Cash Management Trigger Period is continuing on account of a Hilton Trigger Event, the remaining amount (the “**Excess Cash Flow**”) shall be deposited into the Hilton Rollover Account and held and applied in accordance with the terms and provisions of Sections 6.6 and 6.8 hereof;
- (xi) Eleventh, during a Cash Sweep Event Period, the Excess Cash shall be deposited into the Excess Cash Flow Account and held and applied in accordance with the terms and conditions of Sections 6.7 and 6.8.
- (xii) Lastly, the remaining amount shall be deposited into an account designated by Borrower in accordance with the Cash Management Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Note or the other Loan Documents, upon the occurrence and during the continuation of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any amounts then on deposit in the Cash Management Account to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement, the Note and the other Loan Documents, which sub-accounts shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts). All costs and expenses for establishing and maintaining such accounts shall be paid by Borrower.

2.7.3 Payments Received Under Cash Management Agreement. The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement, the Note and the other Loan Documents, and such obligation shall be separate and independent, and not conditioned on any event or circumstance whatsoever. Notwithstanding anything to the contrary contained in this Agreement, the Note or the other Loan Documents, and provided that no Event of Default shall have occurred and remain outstanding, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

III. REPRESENTATIONS AND WARRANTIES

Section 3.1. Borrower Representations.

Borrower represents and warrants to Lender that:

3.1.1 Organization.

(a) Each of Borrower and Sole Member is, and since the date of its respective formation has been, duly organized, validly existing and in good standing with full power and authority to own its assets and conduct its business, and is, and since the date of its respective formation has been, duly qualified and in good standing in all jurisdictions in which the ownership or leasing of its property or the conduct of its business requires such qualification (except where the failure to be so qualified would not have a Material Adverse Effect) and Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents by it, and has the power and authority to execute, deliver and perform under this Agreement, the other Loan Documents and all the transactions contemplated hereby and thereby.

(b) Borrower's exact legal name is correctly set forth in the first paragraph of this Agreement. Borrower is an organization of the type specified in the first paragraph of this Agreement. Borrower is incorporated or organized under the laws of the state specified in the first paragraph of this Agreement. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writings, plans, specifications and schematics, has been for the preceding four (4) months (or, if less than four (4) months, the entire period of the existence of Borrower) and will continue to be the address of

Borrower set forth in the first paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of its incorporation or organization is 5274282. Borrower is a disregarded entity for federal income tax purposes. Sole Member's federal tax identification number is 59-0483700.

3.1.2 Proceedings. This Agreement and the other Loan Documents have been duly authorized, executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law).

3.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any asset or property of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's assets or properties is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's assets or properties.

3.1.4 Litigation. There is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened against Borrower, Sole Member, Guarantor or the Property, or to Borrower's knowledge, against Manager, in any court or by or before any other Governmental Authority that could have a Material Adverse Effect, other than those with respect to Sole Member which have been disclosed in public filings with the Securities Exchange Commission.

3.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which could materially and adversely affect Borrower or the Property, or Borrower's business, assets or properties, operations or condition (financial or otherwise). Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted under Section 3.1.24(d) hereof and (b) obligations under the Loan Documents.

3.1.6 Consents. Each consent, approval, authorization, order, registration or qualification of or with any court or any other Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement and the other Loan Documents has been obtained and is in full force and effect.

3.1.7 Title. Borrower has good and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, when properly recorded in the appropriate records, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to the Permitted Encumbrances. There are no claims for payment or mechanic's, materialman's or other similar liens or claims which have been filed for work, labor or materials affecting the Property which are or may become Liens prior to, or of equal priority with, the Lien of the Security Instrument and the other Loan Documents. None of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Instrument and the other Loan Documents, materially and adversely affect the value of the Property, impair the use or operation of the Property or impair Borrower's ability to perform its Obligations in a timely manner.

3.1.8 No Plan Assets. As of the date hereof and throughout the Term, (a) Borrower does not sponsor, is not obligated to contribute to and is not itself and will not be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, (b) none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (c) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (d) transactions by or with Borrower are not and will not be subject to any statute, rule or regulation regulating investments of, or fiduciary obligations with respect to, "governmental plans" within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement (including, but not limited to, the exercise by Lender of any of its rights under the Loan Documents).

3.1.9 Compliance. Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. In the event that all or any part of the Improvements are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Borrower, threatened with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property. Borrower is not in default or violation of any order, regulation, writ, injunction, decree or demand of any Governmental Authority, the violation of which could have a Material Adverse Effect. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government, any state or local government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's Obligations under any of the Loan Documents.

3.1.10 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of the Property or otherwise in connection with the Loan (i) are true, correct and complete in all material respects, (ii) accurately represent the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and that could have a Material Adverse Effect. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or the Property from that set forth in said financial statements.

3.1.11 Condemnation. No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, has been threatened or is contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

3.1.12 Easements; Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the continued use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over any other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all applicable Governmental Authorities.

3.1.13 Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

3.1.14 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

3.1.15 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, Sole Member or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and, as to enforceability, to principles of equity), and neither Borrower, Sole Member nor Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

3.1.16 Assignment of Leases. The Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases, subject only to a license granted to Borrower to exercise certain rights and to perform certain obligations of the lessor under the Leases, as more particularly set forth therein. No Person other than Lender has any interest in or assignment of the Leases or any portion of the Rents due and payable or to become due and payable thereunder.

3.1.17 Insurance. Borrower has obtained and has delivered to Lender original or certified copies of the Policies, with all premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made under any of the Policies, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

3.1.18 Licenses. To Borrower's knowledge, after due inquiry, all approvals, authorizations, certifications, licenses and permits, including, without limitation, certificates of completion and occupancy, required by any Governmental Authority or otherwise necessary for the legal ownership, use, occupancy and operation of the Property in the manner in which the Property is currently being owned, used, occupied and operated have been obtained by or on behalf of Borrower and are in full force and effect.

3.1.19 Flood Zone. None of the Improvements on the Property is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area (or, if so located, the flood insurance required pursuant to Section 5.1.1(a)(i) is in full force and effect with respect to the Property).

3.1.20 Physical Condition. To Borrower's knowledge, after due inquiry, the Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or any termination or threatened termination of any policy of insurance or bond.

3.1.21 Boundaries. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property. No easements or other encumbrances affecting the Property encroach upon any of the Improvements so as to affect the value, marketability, use or operation of the Property except those which are insured against by the Title Insurance Policy, each of which, whether or not insured against by the Title Insurance Policy, is shown on the Survey.

3.1.22 Leases. Borrower represents and warrants to Lender with respect to the Leases that: (a) the rent roll attached hereto as Schedule I is true, correct and complete and the

Property is not subject to any Leases other than the Leases described in Schedule I, (b) the Leases identified on Schedule I are in full force and effect and there are no defaults thereunder by any party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder, (c) the copies of the Leases delivered to Lender are true, correct and complete, and there are no oral agreements with respect thereto, (d) no Rent (including security or other deposits) has been paid more than one (1) month in advance of its due date, (e) all work to be performed by the landlord under each Lease has been performed as required and has been accepted by the applicable Tenant, (f) other than the Hilton Allowance, any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by the landlord to any Tenant has already been received by such Tenant, (g) all security or other deposits are being held in accordance with the applicable Leases and all applicable Legal Requirements, (h) Borrower has no knowledge of any notice of termination or default with respect to any Lease; (i) Borrower has not assigned or pledged any of the Leases, the rents or any interest therein except to Lender; (j) no Tenant or other Person has an option, right of first refusal or offer or any other preferential right to purchase all or any portion of, or interest in, the Property; (k) no Tenant has any right or option for additional space in the Improvements, (l) no Tenant has assigned its Lease or sublet all or any portion of the premises demised thereby, (m) no Tenant has the right to terminate its Lease prior to expiration of the stated term of such Lease; (n) no Hazardous Substances have been disposed, stored or treated by any Tenant on, under or about the Property; (o) Borrower does not have any knowledge of any Tenant's intention to use its leased premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any other Hazardous Substances, and (p) all existing Leases are subordinate to the Security Instrument either pursuant to their terms or a recorded subordination agreement.

3.1.23 Filing, Recording and Other Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid under the applicable Legal Requirements in connection with the transfer of the Property to Borrower have been paid or are being paid simultaneously herewith. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid under the applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid or are being paid simultaneously herewith. All taxes and governmental assessments due and owing in respect of the Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established under the Loan Documents.

3.1.24 Single Purpose.

Borrower hereby represents and warrants to, and covenants with, Lender that since the date of its formation and at all times on and after the date hereof and until such time as the Debt shall be paid in full:

(a) Borrower (i) has been, is, and will be organized solely for the purpose of acquiring, owning, leasing managing and operating the Property, entering into and performing its obligations under the Loan Documents, refinancing the Property in connection with a permitted

repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, and (ii) has not owned, does not own, and will not own any asset or property other than (A) the Property, and (B) incidental personal property necessary for the ownership, leasing, management or operation of the Property.

(b) Borrower has not engaged and will not engage in any business or activity other than the ownership, leasing, management and operation of the Property and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower has not entered and will not enter into any contract or agreement with any Affiliate of Borrower, any constituent party of Borrower or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair, commercially reasonable, and no less favorable to it than those that would be available on an arm's-length basis from an unrelated third party.

(d) Borrower has not incurred and will not incur any Indebtedness other than (i) the Debt and (ii) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding one percent (1%) of the original principal amount of the Loan at any one time; provided that any Indebtedness incurred pursuant to clause (ii) shall be (A) outstanding not more than sixty (60) days and (B) incurred in the ordinary course of business. No Indebtedness, other than the Debt, may be secured (senior, subordinate or *pari passu*) by the Property.

(e) Borrower has not made and will not make any loans or advances to any other Person (including any Affiliate of Borrower, any constituent party of Borrower or any Affiliate of any constituent party), and has not acquired and shall not acquire obligations or securities of its Affiliates.

(f) Borrower has been, is, and will remain solvent and Borrower has paid its debt and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same became due and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(g) (i) Borrower has done or caused to be done, and will do and cause to be done, all things necessary to observe its organizational formalities and preserve its existence, (ii) Borrower has not terminated or failed to comply with and will not terminate or fail to comply with the provisions of its Organizational Documents, (iii) Borrower has not amended, modified or otherwise changed its Organizational Documents and (iv) unless (A) Lender has consented in writing and (B) following a Securitization of the Loan, the Rating Agencies have issued a Rating Agency Confirmation in connection therewith, Borrower will not amend, modify or otherwise change its Organizational Documents with respect to the "single purpose entity" representations and covenants set forth therein.

(h) Borrower has maintained and will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person. Borrower's assets have not been listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may have been included in a consolidated financial

statement of its Affiliates; provided that, if applicable, (i) appropriate notation were made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit were not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets were listed on Borrower's own separate balance sheet. Borrower's assets will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (B) such assets shall be listed on Borrower's own separate balance sheet. Borrower has filed (if Borrower has filed) and shall file its own tax returns (except to the extent that Borrower was or is treated as a "disregarded entity" for tax purposes and was or is not required to file tax returns under applicable law) and has not filed and shall not file a consolidated federal income tax return with any other Person. Borrower has maintained and shall maintain its books, records, resolutions and agreements as official records.

(i) Borrower (i) has been, will be, and at all times has held and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or any constituent party of Borrower), (ii) has corrected and shall correct any known misunderstanding regarding its status as a separate entity, (iii) has conducted and shall conduct business in its own name, (iv) has not identified and shall not identify itself or any of its Affiliates as a division or department or part of the other and (v) has maintained and utilized and shall maintain and utilize separate stationery, invoices and checks bearing its own name.

(j) Borrower has maintained and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Neither Borrower nor any constituent party of Borrower has sought or will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of Borrower, any sale or other transfer of all or substantially all of its assets or any sale or other transfer outside the ordinary course of business.

(l) Borrower has not commingled and will not commingle funds or other assets of Borrower with those of any Affiliate or constituent party or any other Person, and has held and will hold all of its assets in its own name.

(m) Borrower has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party or any other Person.

(n) Borrower did not assume, guarantee or become obligated for the debts or obligations of any other Person and did not hold itself out to be responsible for or have its credit or assets available to satisfy the debts or obligations of any other Person. Borrower will not assume, guarantee or become obligated for the debts or obligations of any other Person and does not and will not hold itself out to be responsible for or have its credit or assets available to satisfy the debts or obligations of any other Person.

(o) [Intentionally Omitted].

(p) The Organizational Documents of Borrower shall provide that Borrower will not (and Borrower agrees that it will not), without the unanimous consent of its board of directors or managers, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, (ii) seek or consent to the appointment of a receiver, liquidator or any similar official for Borrower or a substantial portion of its assets or properties, (iii) take any action that might cause Borrower to become insolvent, (iv) make an assignment for the benefit of creditors, (v) admit in writing Borrower's inability to pay its debts generally as they become due, (vi) declare or effectuate a moratorium on the payment of any obligations, or (vii) take any action in furtherance of any of the foregoing. In addition, the Organizational Documents of Borrower shall provide that, when voting with respect to any of the matters set forth in the immediately preceding sentence of this Section 3.1.24(p), the board of directors or managers of Borrower, as applicable, shall consider only the interests of Borrower, including its creditors.

(q) [Intentionally Omitted].

(r) The Organizational Documents of Borrower shall provide that, as long as any portion of the Debt remains outstanding, except as expressly permitted pursuant to the terms of the Loan Documents, (i) Sole Member may not resign, and (ii) no additional member shall be admitted to Borrower.

(s) The Organizational Documents of Borrower shall provide that, as long as any portion of the Debt remains outstanding: (i) Borrower shall be dissolved, and its affairs shall be wound up, only upon the first to occur of the following: (A) the termination of the legal existence of the last remaining member of Borrower or the occurrence of any other event which terminates the continued membership of the last remaining member of Borrower in Borrower unless the business of Borrower is continued in a manner permitted by its operating agreement or the Delaware Limited Liability Company Act (the "Act"), or (B) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (ii) upon the occurrence of any event that causes the last remaining member of Borrower to cease to be a member of Borrower or that causes Sole Member to cease to be a member of Borrower (other than (A) upon an assignment by Sole Member of all of its limited liability company interests in Borrower and the admission of the transferee, if permitted pursuant to the Organizational Documents of Borrower and the Loan Documents, or (B) the resignation of Sole Member and the admission of an additional member of Borrower, if permitted pursuant to the Organizational Documents of Borrower and the Loan Documents), to the fullest extent permitted by law, the personal representative of such last remaining member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in Borrower, agree in writing (1) to continue the existence of Borrower, and (2) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower, effective as of the occurrence of the event that terminated the continued membership of such member in Borrower; (iii) the bankruptcy of Sole Member or a Special Member shall not

cause such Sole Member or Special Member to cease to be a member of Borrower and upon the occurrence of such event, the business of Borrower shall continue without dissolution; (iv) in the event of the dissolution of Borrower, Borrower shall conduct only such activities as are necessary to wind up its affairs (including the sale of its assets and properties in an orderly manner), and its assets and properties shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (v) to the fullest extent permitted by applicable law, Sole Member shall irrevocably waive any right or power that it might have to cause Borrower or any of its assets or properties to be partitioned, to cause the appointment of a receiver for all or any portion of the assets or properties of Borrower, to compel any sale of all or any portion of the assets or properties of Borrower pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of Borrower.

(t) Borrower hereby covenants and agrees that it will comply with or cause the compliance with, (i) all of the representations, warranties and covenants in this Section 3.1.24, and (ii) all of the Organizational Documents of Borrower.

(u) Borrower has not permitted and will not permit any Affiliate or constituent party independent access to its bank accounts.

(v) Borrower has paid and shall pay its own liabilities and expenses, including the salaries of its own employees (if any) from its own funds, and has maintained and shall maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(w) Borrower has compensated and shall compensate each of its consultants and agents from its funds for services provided to it. Borrower has paid and shall pay from its assets all obligations of any kind incurred.

(x) Borrower has not (i) filed a bankruptcy, insolvency or reorganization petition or otherwise instituted insolvency proceedings or otherwise sought any relief under any laws relating to the relief from debts or the protection of debtors generally, (ii) sought or consented to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower or for all or any portion of Borrower's assets or properties, (iii) made any assignment for the benefit of Borrower's creditors, or (iv) taken any action that might have caused Borrower to become insolvent. Without the unanimous consent of all of its directors or managers, as applicable, will not (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower or for all or any portion of Borrower's assets or properties, (C) make any assignment for the benefit of Borrower's creditors, or (D) take any action that might cause Borrower to become insolvent.

(y) Borrower has maintained and will maintain an arm's-length relationship with its Affiliates.

(z) Borrower has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including shared office space.

(aa) Except in connection with the Loan, Borrower has not pledged and will not pledge its assets or properties for the benefit of, or to secure the obligations of, any other Person.

(bb) Borrower has had, has and will have no obligation to indemnify its directors, managers, officers or members, as the case may be, or, if applicable, has such an obligation that is fully subordinated to the Debt and that will not constitute a claim against Borrower if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation.

(cc) The Organizational Documents of Borrower shall provide that Borrower will not: (i) dissolve, merge, liquidate, consolidate; (ii) sell, transfer, dispose, or encumber (except in accordance with the Loan Documents) all or substantially all of its assets or properties or acquire all or substantially all of the assets or properties of any other Person; or (iii) engage in any other business activity, or amend its Organizational Documents with respect to any of the matters set forth in this Section 3.1.24, without the prior consent of Lender in its sole discretion.

(dd) Borrower will consider the interests of Borrower's creditors in connection with all actions.

(ee) Borrower has not had and, except in connection with the Loan, does not have and will not have any of its obligations guaranteed by any Affiliate.

(ff) Borrower has not owned or acquired and will not own or acquire any stock or securities of any Person (except to the extent expressly permitted under the Loan Documents).

(gg) Borrower has not bought or held and will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities).

(hh) Borrower has not formed, acquired or held and will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other entity), and Borrower has not owned and will not own any equity interest in any other entity.

3.1.25 Tax Filings. To the extent required, Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower. Borrower believes that its tax returns (if any) properly reflect the income and taxes of Borrower for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

3.1.26 Solvency. Borrower (a) has not entered into the transaction or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately

following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become or may become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

3.1.27 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulations T, U or X or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

3.1.28 Organizational Chart. The organizational chart attached hereto as Schedule III, relating to Borrower and certain Affiliates and other Persons, is true, correct and complete on and as of the date hereof. No Person, other than those Persons shown on Schedule III, has any ownership interest in, or right of control, directly or indirectly, in Borrower.

3.1.29 Bank Holding Company. Borrower is not a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System.

3.1.30 No Other Debt. Borrower has not borrowed or received debt financing (other than permitted pursuant to this Agreement) that has not been heretofore repaid in full.

3.1.31 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (b) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

3.1.32 [Intentionally Omitted]

3.1.33 No Bankruptcy Filing. No petition in bankruptcy has ever been filed against Borrower or any constituent party of Borrower, and neither Borrower nor any constituent party of Borrower has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any of its constituent parties is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's or such constituent party's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or any of its constituent parties.

3.1.34 Full and Accurate Disclosure. To Borrower's knowledge, no information contained in this Agreement, the other Loan Documents, or any written statement or document furnished by or on behalf of Borrower in connection with the Loan or pursuant to the terms of this Agreement or any other Loan Document contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. To Borrower's knowledge, there is no fact or circumstance presently known to Borrower which has not been disclosed to Lender and which could have a Material Adverse Effect.

3.1.35 Foreign Person. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

3.1.36 No Change in Facts or Circumstances; Disclosure. All information submitted by and on behalf of Borrower to Lender and in all financial statements, rent rolls (including the rent roll attached hereto as Schedule I), reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms of this Agreement or the other Loan Documents and all statements of fact made by or on behalf of Borrower in this Agreement or in any other Loan Document, are true, correct and complete in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information or statement of fact inaccurate, incomplete or otherwise misleading in any material respect or that otherwise has or could have a Material Adverse Effect.

3.1.37 Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

3.1.38 Perfection of Accounts. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code) in the Clearing Account and the Cash Management Account in favor of Lender, which security interest is prior to all other Liens, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents, Borrower has not sold, pledged, transferred or otherwise conveyed the Clearing Account and the Cash Management Account;

(b) The Clearing Account and the Cash Management Account constitute "deposit accounts" or "securities accounts" within the meaning of the Uniform Commercial Code;

(c) Pursuant and subject to the terms of this Agreement and the other Loan Documents, Clearing Bank and Cash Management Bank have agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of

the Clearing Account and the Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Clearing Account and the Cash Management Account are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to Clearing Bank or Cash Management Bank complying with instructions with respect to the Clearing Account or the Cash Management Account from any Person other than Lender.

3.1.39 [Intentionally Omitted]

3.1.40 REA. Borrower hereby represents and warrants to Lender with respect to the REA:

(a) Borrower is a party to the REA and the REA is in full force and effect and has not been amended or modified and Borrower's interest therein has not been assigned pursuant to any assignment which survives the Closing Date except the assignment to Lender pursuant to the Loan Documents.

(b) Borrower is not in default under the REA and, to the best of Borrower's knowledge, no other party to the REA is in default thereunder and there is no existing condition which, but for the passage of time or the giving of notice or both, could result in a default under the REA.

(c) To the best of Borrower's knowledge, after due inquiry, the current addresses to which notices are sent to Borrower or any other party to the REA are correctly set forth in the REA.

(d) There are no set-offs, claims, counterclaims or defenses being asserted or capable of being asserted after giving the requisite notice, if any, required under the REA or otherwise known by Borrower or any other party to the REA for the enforcement of the obligations of any party under the REA.

(e) There are no Liens capable of being asserted for amounts due under the provisions of the REA which, if unpaid, may be asserted as a Lien prior to the Lien of the Security Instrument.

(f) All common charges and other sums due from Borrower under the REA have been paid to the extent they are payable on or prior to the date hereof.

(g) Lender is an "Institutional Lender" for purposes of the REA and is entitled to all rights of an "Institutional Lender" or holder of a "mortgage" as defined in the REA.

3.1.41 Patriot Act.

(a) None of Borrower or any of its constituents or Affiliates, and to the best of Borrower's knowledge, any of their respective brokers or other agents acting or benefiting in any capacity in connection with the Loan is a Prohibited Person.

(b) None of Borrower, any of its constituents or Affiliates and any of their respective brokers or other agents acting in any capacity in connection with the Loan, (i) has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) has dealt or will deal in, or otherwise has engaged or will engage in, any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (iii) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Patriot Act.

(c) Borrower covenants and agrees to deliver to Lender any certification or other evidence requested from time to time by Lender in its sole discretion, confirming Borrower's compliance with this Section 3.1.41.

3.1.42 [Intentionally Omitted].

3.1.43 No Casualty. The Property has suffered no material Casualty which has not been fully repaired and the cost thereof fully paid.

3.1.44 Purchase Options. Neither the Property, any part thereof nor any interest therein is subject to any purchase options, rights of first refusal to purchase, rights of first offer to purchase or other similar rights in favor of any Person.

3.1.45 Use of Property. The Property consists solely of an office building and related operations and is used for no other purpose.

3.1.46 Fiscal Year. Each fiscal year of Borrower commences on January 1.

3.1.47 Material Agreements.

(a) Borrower has not entered into, and is not bound by, any Material Agreement which continues in existence, except those previously disclosed in writing to Lender.

(b) Each of the Material Agreements is in full force and effect, there are no monetary or other defaults by Borrower thereunder and, to the best knowledge of Borrower, there are no monetary or other defaults thereunder by any other party thereto. None of Borrower, Manager or any other Person acting on Borrower's behalf has given or received any notice of default under any Material Agreement that remains outstanding or in dispute.

(c) Borrower has delivered true, correct and complete copies of the Material Agreements (including all amendments and supplements thereto) to Lender.

(d) No Material Agreement has as a party an Affiliate of Borrower.

3.1.48 Other Obligations and Liabilities. Borrower has no liabilities or other obligations that arose or accrued prior to the date hereof that, either individually or in the aggregate, could have a Material Adverse Effect. Borrower has no known contingent liabilities.

3.1.49 Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

3.1.50 Underwriting Representations. Borrower hereby represents that it:

(a) has no judgments or liens of any nature against it except for tax liens not yet due;

(b) is not involved in any dispute with any taxing authority;

(c) is not now, nor has ever been, a party to any lawsuit, arbitration, summons, or legal proceeding that is still pending or that resulted in a judgment against it or its assets or properties that has not been paid in full;

(d) has obtained a current Phase I environmental site assessment (and, if applicable, a current Phase II environmental assessment) (collectively, the “**ESA**”) for the Property prepared consistent with ASTM Practice E 1527 and the ESA has not identified any recognized environmental conditions that require further investigation or remediation; and

(e) each amendment and restatement of Borrower’s Organizational Documents has been accomplished in accordance with, and was permitted by, the relevant provisions of said documents prior to such amendment or restatement from time to time.

Section 3.2. Survival of Representations.

The representations and warranties set forth in Section 3.1 hereof shall survive for so long as any amount remains payable to Lender under this Agreement or any of the other Loan Documents.

IV. BORROWER COVENANTS

Section 4.1. Borrower Affirmative Covenants.

Borrower hereby covenants and agrees with Lender that:

4.1.1 Existence; Compliance with Legal Requirements. Each of Borrower and Sole Member shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government, any state or local government or any other Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit

or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all of its assets and properties used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instrument. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. Borrower shall operate the Property in accordance with the terms and provisions of the O&M Agreement in all material respects. After prior notice to Lender, Borrower, at its sole cost and expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement; provided that (a) no Default or Event of Default has occurred and remains outstanding; (b) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Security Instrument; (c) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower or the Property is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (d) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (e) Borrower shall promptly upon final determination thereof comply with such Legal Requirement determined to be valid or applicable or cure any violation of such Legal Requirement; (f) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; (g) Borrower shall furnish such cash or other security as may be required in the proceeding, or as may be requested by Lender, to ensure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith; and (h) such contest by Borrower is not in violation of the Leases. Lender may apply any such security or part thereof as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

4.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 6.2 hereof. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges no later than ten (10) days prior to the date the same shall become delinquent; provided, however, that Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 6.2 hereof. Borrower shall not permit or suffer and shall promptly cause to be paid and discharged any Lien or charge against the Property. After prior notice to Lender, Borrower, at its sole cost and expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges; provided that (a) no Default or Event of Default has occurred and remains outstanding;

(b) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Security Instrument; (c) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable Legal Requirements; (d) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (e) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (f) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; (g) Borrower shall furnish such cash or other security as may be required in the proceeding, or as may be requested by Lender, to ensure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon; and (h) such contest by Borrower is not in violation of the Leases. Lender may pay over, assign or transfer any such security or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Lender, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

4.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against the Property, Borrower, Sole Member or Guarantor which, if adversely determined, could have a Material Adverse Effect. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

4.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

4.1.5 Further Assurances; Supplemental Mortgage Affidavits. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) cure, or cause to be cured, any defects in the execution and delivery of the Loan Documents;

(c) execute and deliver, or cause to be executed and delivered, all such documents, instruments, certificates, assignments and other writings and do, or cause to be done, such other acts necessary or desirable (i) to correct any omissions in the Loan Documents, (ii) to evidence and more fully describe the collateral at any time securing or intended to secure the

Obligations, (iii) to perfect, protect or preserve any Liens created under any of the Loan Documents or (iv) to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith; and

(d) do and execute, or cause to be done and executed, all such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

4.1.6 Financial Reporting.

(a) **GAAP.** Borrower shall keep and maintain, or shall cause to be kept and maintained, in accordance with GAAP (or such other accounting basis acceptable to Lender) and the requirements of Regulation AB (if applicable), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. All financial statements delivered to Lender pursuant to this Section 4.1.6 shall be prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and consistently applied and the requirements of Regulation AB (if applicable).

(b) **Monthly Reports.** Prior to a Securitization and if requested by Lender, Borrower shall furnish, or cause to be furnished, to Lender on or before twenty (20) days after the end of each calendar month the following items, accompanied by an Officer's Certificate stating that such items are true, correct and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: (i) a rent roll for the subject month; (ii) monthly and year-to-date operating statements prepared for such month, noting Gross Income from Operations, Operating Expenses, Capital Expenditures, Net Operating Income, Net Cash Flow and such other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such month, all in form satisfactory to Lender; and (iii) a calculation reflecting the Debt Service Coverage Ratio as of the last day of such month for such month and for the immediately preceding twelve (12) month period. In addition, such Officer's Certificate shall also state the representations and warranties of Borrower set forth in Section 3.1.24 are true and correct as of the date of such certificate and that there are no trade payables and operational debt outstanding for more than sixty (60) days.

(c) **Quarterly Reports.** Borrower shall furnish, or cause to be furnished, to Lender on or before forty-five (45) days after the end of each calendar quarter the following items, accompanied by an Officer's Certificate stating that such items are true, correct and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: (i) a rent roll for the subject quarter; (ii) (A) a balance sheet for Borrower as of the last day of such quarter and (B) quarterly and year-to-date operating statements prepared for such quarter, noting Gross Income from Operations, Operating Expenses, Capital Expenditures, Net Operating Income, Net Cash Flow and such other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such quarter, all in form satisfactory to Lender; and (iii) a calculation reflecting the Debt Service Coverage Ratio as of the last day of such quarter for

such quarter and for the last four quarters. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 3.1.24 are true and correct as of the date of such certificate and that there are no trade payables and operational debt outstanding for more than sixty (60) days.

(d) **Annual Reports.** Borrower shall furnish, or cause to be furnished, to Lender annually, within ninety (90) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual unaudited financial statements prepared by a certified public accountant acceptable to Lender in accordance with GAAP (or such other accounting basis acceptable to Lender) and the requirements of Regulation AB (if applicable) covering the Property for such Fiscal Year and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year and shall include, but not be limited to, amounts representing annual Gross Income from Operations, Operating Expenses, Capital Expenditures, Net Operating Income and Net Cash Flow. Borrower's annual financial statements shall be accompanied by (i) an Officer's Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP (or such other accounting basis acceptable to Lender) and the requirements of Regulation AB (if applicable), (ii) an unqualified opinion of a certified public accountant reasonably acceptable to Lender, (iii) a list of tenants, if any, occupying more than ten percent (10%) of the total floor area of the Improvements, (iv) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis, and (v) a schedule prepared by such independent certified public accountant reconciling Net Operating Income to Net Cash Flow, which shall itemize all adjustments made to Net Operating Income to arrive at Net Cash Flow deemed material by such certified public accountant.

(e) **Certification; Supporting Documentation.** Each such financial statement shall be in scope and detail reasonably satisfactory to Lender and certified by the chief financial officer or representative of Borrower.

(f) **Access.** Lender shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Borrower or other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence of an Event of Default, Borrower shall pay any reasonable costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest.

(g) **Format of Delivery.** Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a CD, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form reasonably acceptable to Lender.

(h) **Annual Budget.** For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than sixty (60) days prior to the commencement of such period or Fiscal Year, which Annual Budget shall set forth, on a month-by-month basis, in reasonable detail, each line item of Borrower's good faith estimate of Gross Income from Operations, Operating Expenses and Capital Expenditures for such period or Fiscal Year and shall otherwise be in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's reasonable approval (each such Annual Budget, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this Section 4.1.6(h) until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recent Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges. In the event that Borrower must incur an extraordinary operating expense or capital expense not set forth in the applicable Approved Annual Budget (each, an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval.

(i) **Additional Information.** Borrower shall submit to Lender the financial data and financial statements required, and within the time periods required, under Sections 9.1(d), (e) and (f), if and when applicable.

(j) **Other Required Information.** Borrower shall furnish to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Property and the financial affairs of Borrower as may be reasonably requested by Lender (including, without limitation, a comparison of the budgeted income and expenses as set forth in the applicable Approved Annual Budget and the actual income and expenses for the applicable month, quarter or year and year-to-date for the Property, together with a detailed explanation of any variances of more than ten percent (10%) between budgeted and actual amounts for such periods).

(k) **Reporting Default.** If Borrower fails to provide to Lender the financial statements and other information specified in this Section 4.1.6 within the respective time period specified, and such failure is not remedied within five (5) Business Days following Borrower's receipt of written notice of such failure from Lender, then (i) such continued failure shall, at Lender's election, constitute an Event of Default upon notice from Lender, and (ii) Borrower shall pay to Lender a fee in the amount of \$5,000 immediately upon the occurrence of such continued failure and again upon the expiration of each 30-day period thereafter until compliance is achieved, which amounts shall constitute a portion of the Obligations and, if unpaid, shall accrue interest at the Default Rate.

4.1.7 Title to Property. Borrower shall warrant and defend (a) its title to the Property, subject only to Permitted Encumbrances, and (b) the validity and priority of the Liens of the Security Instrument and the Assignment of Leases on the Property, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property or any part thereof is claimed by any other Person except as expressly permitted hereunder.

4.1.8 Estoppel Statement.

(a) Borrower shall deliver to Lender, within five (5) Business Days after Lender's request, a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the interest rate of the Loan, (iv) the date installments of principal and/or interest were last paid, (v) any offsets or defenses to the payment and performance of the Obligations, if any, and (vi) that this Agreement and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified (or, if modified, giving particulars of such modification).

(b) Borrower shall deliver to Lender, within thirty (30) days after Lender's request, an estoppel certificate from each Tenant under any Lease in form and substance reasonably satisfactory to Lender; provided that (i) Borrower shall only be required to use commercially reasonable efforts to obtain an estoppel certificate from any Tenant not required to provide an estoppel certificate under its Lease, (ii) such estoppel certificate may be in the form required under such Lease, and (iii) after the final Securitization of the Loan, Borrower shall not be required to deliver such estoppel certificate from any Tenant more frequently than two (2) times in any calendar year.

(c) Borrower shall use its commercially reasonable efforts to deliver to Lender, within thirty (30) days after Lender's request, an estoppel certificate from each party under the REA in form and substance reasonably satisfactory to Lender; provided that such estoppel certificate may be in the form required under the REA.

4.1.9 Leases.

(a) All Leases and all renewals of Leases executed after the date hereof shall (i) provide for economic terms, including rental rates, comparable to existing local market rates for similar properties, (ii) be on commercially reasonable terms, (iii) have a term of not less than three (3) years (unless Lender approves in writing a shorter term), (iv) have a term of not more than fifteen (15) years, including all extensions and renewals (unless Lender approves in writing a longer term), (v) provide that such Lease is subordinate to the Security Instrument and the Assignment of Leases and that the Tenant thereunder will attorn to Lender and any purchaser at a foreclosure sale, (vi) be with Tenants that are creditworthy, (vii) be written substantially in accordance with a standard form of Lease which shall have been approved in writing by Lender (subject to any commercially reasonable changes made in the course of negotiations with the applicable Tenant), (viii) not be with any Affiliate of Borrower, Guarantor or Manager, and (ix) not contain (1) any option to purchase, any right of first option to purchase or any right of first refusal to purchase which are exercisable prior to the Maturity Date and which are not expressly

subordinate to Lender's rights and remedies under, and the Lien of, the Security Instrument, or (2) any right to terminate (except in the event of destruction or condemnation of all or substantially all of the Property), any requirement for a non-disturbance or recognition agreement, or any other terms which could materially adversely affect Lender's rights under the Loan Documents; provided that, in connection with renewals of Leases existing on the date hereof, any applicable term that would otherwise breach the requirements set forth in this Section 4.1.9(a) shall be permitted to the extent necessary to implement a renewal term expressly contained in the applicable Lease and with respect to which Borrower has no discretion.

(b) Borrower (i) shall perform the obligations which Borrower is required to perform under the Leases; (ii) shall enforce the obligations to be performed by the Tenants thereunder; (iii) shall promptly furnish to Lender any notice of default or termination received by Borrower from any Tenant, and any notice of default or termination given by Borrower to any Tenant; (iv) shall not collect any Rents for more than one (1) month in advance of the time when the same shall become due, except for bona fide security deposits not in excess of an amount equal to two (2) months' rent; (v) shall not enter into any ground Lease or master Lease of any part of the Property; (vi) shall not further assign or encumber any Lease or the Rents (except as contemplated by the Loan Documents); (vii) shall not, except with Lender's prior consent, cancel or accept surrender or termination of any Lease, with the exception of the Termination Right under the Hilton Lease; and (viii) shall not, except with Lender's prior consent, modify or amend any Lease (except as expressly permitted in subparagraph (c) below; and except, solely with respect to Leases that are not Major Leases, for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not affecting the economic terms of the applicable Lease). Any action in violation of clause (v), (vi), (vii) or (viii) of this Section 4.1.9(b) shall be void at the election of Lender.

(c) All Major Leases and all renewals, modifications and amendments thereof (other than renewals, modifications and amendments strictly limited to the implementation of options or rights expressly contained in Major Leases and with respect to which Borrower has no discretion as to the terms thereof) executed after the date hereof shall be subject to Lender's prior approval, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Borrower shall be permitted to modify or amend the Hilton Lease without Lender's consent provided that (i) all terms, conditions and provisions set forth in this Section 4.1.9 are satisfied, other than those which are expressly modified pursuant to this subsection (c); (ii) any renewal or extension term in such modification or extension shall not expire prior to the date which is five (5) years' beyond the then current expiration date under the Hilton Lease (discounting any other renewal or extension options set forth therein); and (iii) after taking into account any modifications to the Rents payable thereunder, the pro forma Debt Service Coverage Ratio, as determined by Lender, shall be equal to or greater than 3.29:1.0.

(d) Borrower shall not permit or consent to any assignment or sublease of any Major Lease without Lender's prior approval (other than any assignment or sublease expressly permitted under a Major Lease pursuant to a unilateral right of Tenant thereunder not requiring the consent of Borrower).

(e) Upon Borrower's request and at Borrower's sole cost and expense, Lender shall execute and deliver its standard form of subordination, non-disturbance and attornment agreement to Tenant under any future Major Lease approved by Lender, with such commercially reasonable changes as may be requested by such Tenant and which are acceptable to Lender.

(f) Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender in connection with the review of any proposed Major Lease, any other matter requiring Lender's consent under this Section 4.1.9 or execution and delivery of any subordination, non-disturbance and attornment agreement in accordance with this Section 4.1.9.

(g) Within ten (10) days after Lender's request, Borrower shall furnish to Lender a statement of all tenant security or other deposits and copies of all Leases not previously delivered to Lender, certified as being true, correct and complete.

(h) All security deposits of Tenants, whether held in cash or any other form, shall be held in compliance with all applicable Legal Requirements, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower in a separately designated account under Borrower's control at Clearing Bank. After the occurrence of an Event of Default, Borrower shall, if permitted by the applicable Legal Requirements, cause all such security deposits (and any interest thereon) to be transferred to the Cash Management Account to be held by Cash Management Bank in a separate Eligible Account subject to the terms of the Leases. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under the applicable Legal Requirements (i) shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as described above, (ii) shall be issued by an institution reasonably satisfactory to Lender, (iii) shall, if permitted by the applicable Legal Requirements, name Lender as payee or mortgagee thereunder (or, at Lender's option, be fully assignable to Lender), and (iv) shall in all respects comply with the applicable Legal Requirements and otherwise be satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence satisfactory to Lender of Borrower's compliance with the foregoing.

4.1.10 Alterations. Lender's prior approval shall be required in connection with any alterations to the Property (a)(i) that could have a Material Adverse Effect, (ii) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Alteration Threshold, or (iii) that could adversely affect any structural component of any Improvements, any utility or HVAC system at the Property or the exterior of any building constituting a part of any Improvements or (b) any alterations to the Property during the continuation of any Event of Default, which approval, in each case under clause (a) or (b), may be granted or withheld in Lender's sole discretion. Any alteration to the Property shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Property shall at any time exceed the Alteration Threshold, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) Letters of Credit, (C) U.S. Obligations or (D) other securities acceptable to Lender, provided that Lender shall have received a Rating Agency Confirmation as to the form and issuer of same. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements (other than such

amounts to be paid or reimbursed by Tenants under the Leases; provided that the applicable Leases shall be in full force and effect) over the Alteration Threshold, and, at Lender's option, Lender shall have the right to apply such security from time to time to pay for such alterations. Upon substantial completion of any alteration to the Property, Borrower shall provide evidence satisfactory to Lender that (1) such alteration was constructed in accordance with all applicable Legal Requirements, (2) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with such alteration have been paid in full and have delivered unconditional releases of liens, and (3) all licenses and permits necessary for the use, operation and occupancy of the Improvements have been issued, provided that, if any such license or permit is temporary in nature, Borrower shall diligently pursue procuring a permanent license or permit from the applicable Governmental Authority.

4.1.11 Intentionally Omitted.

4.1.12 Material Agreements. Borrower shall (a) promptly perform and/or observe the covenants, agreements and conditions required to be performed and observed by it under each Material Agreement and Operating Agreement to which it is a party, and do all things necessary to preserve and to keep unimpaired its rights thereunder, (b) promptly notify Lender in writing of the giving of any notice of any default by any party under any Material Agreement and Operating Agreement of which it is aware and (c) promptly enforce the performance and observance of all of the covenants, agreements and conditions required to be performed and/or observed by any other party under each Material Agreement and Operating Agreement to which Borrower is a party in a commercially reasonable manner.

4.1.13 Performance by Borrower. Borrower shall, in a timely manner, observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by Borrower without the prior consent of Lender.

4.1.14 Costs of Enforcement/Remedying Defaults. In the event (a) that the Security Instrument is foreclosed in whole or in part or the Note or any other Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any Lien or mortgage, whether senior or junior to the Security Instrument, in which proceeding Lender is made a party, (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or Guarantor or an assignment by Borrower or Guarantor for the benefit of its creditors, or (d) Lender shall remedy or attempt to remedy any Event of Default, Borrower shall be chargeable with and agrees to pay all costs and expenses incurred by Lender as a result thereof, including costs of collection and defense (including reasonable attorneys', experts', consultants' and witnesses' fees and disbursements) in connection therewith and in connection with any appellate proceeding or post-judgment action, which shall be due and payable on demand, together with interest at the Default Rate from the date such costs and expenses were incurred to and including the date the reimbursement payment is received by Lender. All such indebtedness shall be secured by the Security Instrument.

4.1.15 Business and Operations. Borrower will continue to engage in the businesses currently conducted by it as and to the extent the same are necessary for the

ownership, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, management and operation of the Property. Borrower shall at all times cause the Property to be maintained as an office building.

4.1.16 [Intentionally Omitted]

4.1.17 [Intentionally Omitted]

4.1.18 Handicapped Access.

(a) Borrower covenants and agrees that the Property shall at all times comply, in all material respects, to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all federal, state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, the "**Access Laws**").

(b) Notwithstanding anything to the contrary set forth herein or in any other Loan Document, Borrower shall not alter or cause or permit to be altered the Property in any manner which would increase Borrower's responsibilities for compliance with any Access Laws without the prior approval of Lender. The foregoing shall apply to tenant improvements constructed by Borrower or by any Tenant. Lender may condition any such approval upon receipt of a certificate of compliance with the Access Laws from an architect, engineer, or other Person acceptable to Lender.

(c) Borrower covenants and agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to the violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with any Access Laws.

4.1.19 Additional Reports. Borrower shall deliver to Lender as soon as reasonably available, but in no event later than thirty (30) days after such items become available to Borrower in final form, copies of any final engineering, environmental or seismic reports prepared for Borrower with respect to the Property.

4.1.20 Notice of Certain Events. Borrower shall promptly notify Lender of (a) any Default or Event of Default, together with a detailed statement of the steps being taken to cure such Default or Event of Default; (b) any notice of default received by Borrower under any agreement, document or instrument to which Borrower is a party or to which Borrower or the Property is subject; (c) any notice of default received by Borrower under any other obligations relating to the Property or otherwise material to Borrower's business; and (d) any pending or threatened legal, judicial, administrative or regulatory proceedings, including any disputes between Borrower and any Governmental Authority, affecting Borrower or the Property.

4.1.21 Further Assurances; Power of Attorney. In the event Borrower fails to comply with Lender's written request to do so within ten (10) days' of Borrower's receipt of such written request, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact

to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary for the purpose of exercising and perfecting any and all rights and remedies available to Lender under the Loan Documents, at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to Section 10.2, Section 10.3, and Section 10.4 (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

4.1.22 Taxes on Security. Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender. If there shall be enacted any law (a) deducting the Loan from the value of the Property for the purpose of taxation, (b) affecting any Lien on the Property, or (c) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Lender, on demand, all taxes, costs and charges for which Lender is or may be liable as a result thereof; provided, however, that if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Lender may declare all amounts owing under the Loan Documents to be immediately due and payable.

4.1.23 [Intentionally Omitted]

4.1.24 REA. The Borrower hereby covenants and agrees with Lender with respect to the REA as follows:

(a) Borrower shall pay all charges and other sums to be paid by Borrower pursuant to the terms of the REA as the same shall become due and payable and prior to the expiration of any applicable grace period therein provided. After prior notice to Lender, Borrower, at its own cost and expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any charges required to be paid by Borrower pursuant to the REA; provided that (i) no Default or Event of Default has occurred and remains outstanding; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Security Instrument; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of the REA and any other instrument to which Borrower is subject or by which the Property is bound and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable Legal Requirements; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) the REA will not be in danger of being terminated; (vi) Borrower shall promptly upon final determination thereof pay the amount of any such charges, together with all interest and penalties which may be payable in connection therewith; (vii) such proceeding shall suspend the collection of such charges from Borrower and the Property; (viii) Borrower shall furnish such cash or other security as may be required in the proceeding or as may be required by Lender to ensure the payment of any such charges, together with all interest and penalties thereon; and (ix) such contest by Borrower is not in violation of the Leases. Lender may pay over, assign or transfer any such security or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Lender, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

(b) Borrower shall perform and observe all of the terms, covenants and conditions required to be performed and observed by Borrower pursuant to terms of the REA.

(c) Borrower shall take all actions as may be necessary from time to time to preserve and maintain the REA in accordance with all applicable Legal Requirements.

(d) Borrower shall enforce, in a commercially reasonable manner, the terms, covenants and conditions to be performed and observed by the parties to the REA (other than Borrower).

(e) Borrower shall promptly furnish to Lender any notice of default or other communication delivered in connection with the REA by any party to the REA or any third-party (other than routine correspondences and invoices).

(f) If Lender or its nominee, designee, successor, or assignee acquires title and/or rights of Borrower under the REA by reason of foreclosure of the Security Instrument, deed-in-lieu of foreclosure or otherwise, Lender or such other party shall (i) succeed to all of the rights of and benefits accruing to Borrower under the REA, and (ii) be entitled to exercise all of the rights and benefits accruing to Borrower under the REA. At such time as Lender shall request, Borrower agrees to execute and deliver to Lender such documents as Lender and its counsel may require in order to ensure that the provisions of this Section 4.1.24(f) will be validly and legally enforceable and effective against Borrower and all parties claiming by, through, under or against Borrower.

4.1.25 Patriot Act Compliance. Borrower will use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities relating to terrorism and money laundering. Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities relating to terrorism and money laundering. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, Lender may, at its option, cause Borrower to comply therewith. All costs and expenses incurred by Lender in connection therewith shall be paid by Borrower to Lender, upon demand, with interest at the Default Rate from the date such costs and expenses were incurred to and including the date the reimbursement payment is received by Lender. All such indebtedness shall be secured by the Security Instrument.

Section 4.2. Borrower Negative Covenants.

Borrower covenants and agrees with Lender that:

4.2.1 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any direct or indirect interest in Borrower or Sole Member or on any portion of the Property except for Permitted Encumbrances.

4.2.2 Dissolution. Borrower shall not (a) engage in any dissolution, winding up, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership, management and operation of the Property, (c) amend, modify, waive or terminate any Organizational Document or any provision thereof, (d) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the assets or properties of Borrower except to the extent expressly permitted by the Loan Documents, or (e) cause, permit or suffer Sole Member to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which Sole Member would be dissolved, wound up or liquidated in whole or in part, or (ii) amend, modify, waive or terminate any Organizational Document of Sole Member or any provision thereof, in each case without obtaining the prior consent of Lender.

4.2.3 Change in Business. Borrower shall not (a) enter into any line of business other than the ownership, management and operation of the Property, (b) make any material change in the scope or nature of its business objectives, purposes or operations, or (c) undertake or participate in activities other than the continuance of its present business.

4.2.4 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

4.2.5 Affiliate Transactions. Borrower shall not enter into, or be a party to, any transaction with any Affiliate of Borrower or any partner, member, or shareholder, as applicable, of Borrower or any Affiliate of Borrower except in the ordinary course of business and on terms and conditions that are fully disclosed to Lender in advance and that are intrinsically fair, commercially reasonable and no less favorable to Borrower or such Affiliate, partner, member or shareholder than those that would be available on an arm's-length basis with an unrelated third party.

4.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

4.2.7 Assets. Borrower shall not purchase or own any asset or property other than the Property and any asset or property necessary for or incidental to the operation of the Property.

4.2.8 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property, and (b) with any portion of the Property which may be deemed to constitute personal property, or any other action or procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property or any portion thereof.

4.2.9 Principal Place of Business. Borrower shall not change its principal place of business from the address set forth on the first page of this Agreement without first giving Lender thirty (30) days' prior notice.

4.2.10 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or any action taken or to be taken, hereunder or under the other Loan Documents (or the exercise by Lender of any of its rights under this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

(b) Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the Term, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one (1) or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

4.2.11 Material Agreements. Borrower shall not, without Lender's prior consent: (a) enter into, surrender or terminate any Material Agreement or Operating Agreement to which it is a party or to which Borrower or the Property is subject (unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable), (b) increase or consent to the increase of the amount of any charges under any Material Agreement or Operating Agreement to which it is a party or to which Borrower or the Property is subject, except as provided therein or on an arm's-length basis and commercially reasonable terms; or (c) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Material Agreement or Operating Agreement to which it is a party or to which Borrower or the Property is subject in any material respect, except on an arm's-length basis and commercially reasonable terms.

4.2.12 Change of Name, Identity or Structure. Borrower will not cause or permit any change to be made to its name, identity (including its trade name or names) or corporate, partnership or other organizational structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior consent of Lender. Borrower shall execute and deliver to Lender, prior to or

contemporaneously with the effective date of any such change, any financing statement or amendment to financing statement required by Lender to establish or maintain the validity, perfection and priority of the security interests granted by the Loan Documents. At Lender's request, Borrower shall execute a certificate in form satisfactory to Lender listing each trade name under which Borrower operates or intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

4.2.13 Special Purpose. Without in any way limiting the provisions of this Article IV, Borrower shall not take or permit any action that would result in Borrower not being in compliance with the representations, warranties and covenants set forth in Section 3.1.24.

4.2.14 Prohibited Person. At all times throughout the Term, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Key Principal or Guarantor shall constitute property of, or shall be beneficially owned, directly or indirectly, by any Prohibited Person, with the result that the investment in Borrower, Key Principal or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law, or the Loan made by Lender would be in violation of law, (b) no Prohibited Person shall have any interest of any nature whatsoever in Borrower, Key Principal or Guarantor, as applicable, with the result that the investment in Borrower, Key Principal or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law, and (c) none of the funds of Borrower, Key Principal or Guarantor, as applicable, shall be derived from any unlawful activity with the result that the investment in Borrower, Key Principal or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law.

4.2.15 Intentionally Omitted.

4.2.16 REA.

(a) Borrower shall not, without Lender's prior consent, modify, amend or supplement, or consent to or suffer any modification, amendment, or supplementation of the REA.

(b) Borrower shall not, without Lender's prior consent, otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under the REA.

(c) Borrower shall not take (and hereby assigns to Lender any right it may have to take) any action to surrender, terminate, cancel, or accept any surrender, termination or cancellation of the REA.

(d) Borrower shall not assign (other than to Lender) or encumber (other than in favor of Lender as security for the Obligations) any of its rights under the REA.

4.2.17 [Intentionally Omitted]

V. INSURANCE, CASUALTY AND CONDEMNATION

Section 5.1. Insurance.

5.1.1 Insurance Policies.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive all risk insurance (including wind and named storms) on the Improvements and the personal property at the Property (A) in an amount equal to one hundred percent (100%) of the "full replacement cost" of the Property, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and personal property at the Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand and No/100 Dollars (\$10,000) for all such insurance coverage, except for windstorm and earthquake which may provide for deductible up to 5% of the total insurable value of the property; and (D) containing "law and ordinance" coverage if any of the Improvements or the use of the Property shall at any time constitute a legal non-conforming structure or use. In addition, Borrower shall obtain: (1) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, plus such excess amount as Lender shall require; and (2) if the Property is located in an area with a high degree of seismic activity, earthquake insurance in amounts and in form and substance satisfactory to Lender, provided that the insurance pursuant to clauses (1) and (2) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this Section 5.1.1(a)(i).

(ii) broad form commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with an occurrence limit of not less than One Million and No/100 Dollars (\$1,000,000) and an aggregate limit of not less than Two Million and No/100 Dollars (\$2,000,000); (B) to continue at not less than the aforesaid limit until required to be changed by Lender by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) contractual liability for all legal contracts; and (5) contractual liability covering the indemnities contained in Article 9 of the Security Instrument to the extent the same is available;

(iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by insurance pursuant to Sections 5.1.1(a)(i), (iv), (vi), (xi) and (xii) for a period commencing at the time of loss for such length of time as it

takes to repair or replace with the exercise of due diligence and dispatch; (C) in an amount equal to one hundred percent (100%) of the projected gross income from the Property for a period from the date of loss to a date (assuming total destruction) which is twelve (12) months from the date that the Property is repaired or replaced and operations are resumed; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All proceeds payable to Lender pursuant to this Section 5.1.1(a)(iii) shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligation to pay the Debt at the time and in the manner provided for in this Agreement, the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property and liability coverage forms do not otherwise apply, (A) commercial general liability and umbrella liability insurance covering claims related to construction, repair and alteration at the Property not covered by or under the terms or provisions of the commercial general liability insurance and umbrella liability insurance policies required under this Section 5.1.1; and (B) the insurance provided for in Section 5.1.1(a)(i) above written in a so-called builder's risk completed value form in amounts and with deductibles, terms and conditions required by Lender (1) on a non-reporting basis, (2) covering all risks required to be insured against pursuant to Sections 5.1.1(a)(i), (iii), (vi), (xi) and (xii), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least One Million and No/100 Dollars (\$1,000,000) per accident and per disease per employee, and One Million and No/100 Dollars (\$1,000,000) for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) comprehensive boiler and machinery insurance in amounts required by Lender and on terms consistent with the insurance required under Section 5.1.1(a)(i) above (if applicable);

(vii) umbrella liability insurance in addition to primary coverage in an amount not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence on terms consistent with the insurance required under Section 5.1.1(a)(ii) and (viii);

(viii) commercial auto liability coverage for all owned and non-owned vehicles, including rented and leased vehicles, containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000) (if applicable);

(ix) liquor liability insurance or other liability insurance required in connection with the sale of alcoholic beverages (if applicable);

(x) insurance against employee dishonesty in an amount required by Lender and with a deductible not greater than Ten Thousand and No/100 Dollars (\$10,000) (if applicable);

(xi) with respect to commercial property, general liability, business income, and umbrella liability insurance required under this Section 5.1.1(a) (including, if applicable, insurance required under Section 5.1.1(a)(iv) above), insurance for loss resulting from perils and acts of terrorism in amounts and with terms and conditions applicable to commercial property, general liability, business income, and umbrella liability insurance required under this Section 5.1.1(a). The policy or endorsement providing for such insurance shall be in form and substance satisfactory to Lender and shall satisfy Rating Agency criteria for securitized loans; and

(xii) upon sixty (60) days' notice, such other insurance and in such amounts as Lender may, from time to time, reasonably request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 5.1.1(a) shall be obtained under valid and enforceable policies (each individually, a "**Policy**" and collectively, the "**Policies**") and, to the extent not specified above, shall be subject to the approval of Lender as to insurers, amounts, deductibles, loss payees and insureds. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies (and, upon Lender's request, certified copies of such Policies) accompanied by evidence satisfactory to Lender of payment of the premiums then due thereunder (the "**Insurance Premiums**") shall be delivered by Borrower to Lender.

(c) Any blanket insurance Policy shall be subject to Lender's approval, which approval shall be conditioned upon, among other things, evidence satisfactory to Lender that such Policy provides the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 5.1.1(a).

(d) All Policies of insurance provided for or contemplated by Section 5.1.1(a) shall be primary coverage and shall name Borrower as a named insured and, in the case of liability policies, except for the Policy referenced in Section 5.1.1(a)(v) and (viii), shall name Lender and its successors and/or assigns as the additional insured, as its interests may appear,

and, in the case of property insurance (including, but not limited to, flood, earthquake, boiler and machinery, and terrorism insurance), shall name Lender and its successors and/or assigns, as their interests may appear, as mortgagee pursuant to a non-contributing mortgagee clause in favor of Lender and its successors and/or assigns providing that the loss thereunder shall be payable to Lender and its successors and/or assigns. Borrower shall not procure or permit any of its constituent entities to procure any other insurance coverage which would be on the same level of payment as the Policies or would adversely impact in any way the ability of Borrower or Lender to collect any proceeds under any of the Policies.

(e) All property Policies of insurance provided for in Section 5.1.1(a) shall provide that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be canceled or permitted to lapse without at least thirty (30) days' written notice to Lender, except ten (10) days' written notice for non-payment of premium;

(iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and

(iv) the issuers thereof shall give ten (10) days' written notice to Lender if the issuers elect not to renew such policy prior to its expiration.

(f) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate and all costs and expenses (including any Insurance Premiums) incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand with interest at the Default Rate from the date such costs and expenses were incurred to and including the date the reimbursement payment is received by Lender. All such indebtedness shall be secured by the Security Instrument.

(g) In the event of foreclosure of the Security Instrument or other transfer of title to the Property in extinguishment in whole or in part of the Obligations, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in Lender, the purchaser at such foreclosure or the transferee in the event of such other transfer of title.

5.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of “A” or better by S&P or “A X” or better by AM Best.

Section 5.2. Casualty and Condemnation.

5.2.1 Casualty. If the Property shall sustain a Casualty, Borrower shall give prompt notice of such Casualty to Lender and shall promptly commence and diligently prosecute to completion the Restoration of the Property in accordance with Section 5.3 hereof. Borrower shall pay all costs and expenses of such Restoration whether or not such costs and expenses are covered by insurance. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. In the event of a Casualty where the loss and the applicable Net Proceeds are less than the Restoration Threshold, Borrower may settle and adjust such claim; provided that (a) no Event of Default has occurred and remains outstanding and (b) such adjustment is carried out in a commercially reasonable and timely manner. In the event of a Casualty where the loss or the applicable Net Proceeds is equal to or greater than the Restoration Threshold or if an Event of Default has occurred and remains outstanding, Borrower may settle and adjust such claim only with the prior consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower’s cost and expense, in any such adjustments. Notwithstanding any Casualty, Borrower shall continue to pay the Debt at the time and in the manner provided for in this Agreement, the Note and the other Loan Documents.

5.2.2 Condemnation. Borrower shall give Lender prompt notice of any actual or threatened Condemnation by any Governmental Authority of all or any part of the Property and shall deliver to Lender a copy of any and all notices or papers served in connection with such Condemnation or related proceedings. Borrower may settle and compromise any Condemnation only with the prior consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower’s cost and expense, in any applicable litigation or proceeding and settlement discussions in respect thereof and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its cost and expense, diligently prosecute any such litigations or proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such litigations or proceedings. Lender is hereby irrevocably appointed as Borrower’s attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Award and to make any compromise or settlement in connection with any Condemnation. Notwithstanding any Condemnation, Borrower shall continue to pay the Debt at the time and in the manner provided for in this Agreement, the Note and the other Loan Documents. Lender shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive interest at the rate or rates provided herein or in the Note. If any portion of the Property is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute to completion the Restoration of the Property and otherwise comply with the provisions of Section 5.3 hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award or a portion thereof sufficient to pay the Debt in full.

5.2.3 Casualty Proceeds. Notwithstanding the last sentence of Section 5.1.1(a)(iii) above, and provided that no Event of Default has occurred and remains outstanding, proceeds received by Lender on account of business or rental interruption or other loss of income insurance specified in Section 5.1.1(a)(iii) above with respect to any Casualty shall be (a) during any Cash Management Trigger Event Period, deposited by Lender into the Cash Management Account (in installments from time to time, if applicable) to the extent such proceeds (or a portion thereof) reflects a replacement for lost Rents for the relevant period, as determined by Lender in good faith and (b) during the absence of a Cash Management Trigger Event Period, held by Lender and disbursed to Borrower (in installments from time to time, if applicable) to the extent such proceeds (or a portion thereof) reflects a replacement for lost Rents for the relevant period, as determined by Lender in good faith. All other such proceeds shall be held by Lender and disbursed in accordance with Section 5.3 hereof.

Section 5.3. Delivery of Net Proceeds.

5.3.1 Minor Casualty or Condemnation. If a Casualty or Condemnation has occurred to the Property and the Net Proceeds shall be less than the Restoration Threshold and the costs and expenses to complete the Restoration shall be less than the Restoration Threshold, the Net Proceeds will be disbursed by Lender to Borrower upon receipt; provided that, subject to Section 5.3.2(i) hereof, all of the conditions set forth in Section 5.3.2(a) hereof are met and Borrower delivers a written undertaking to commence and complete the Restoration in an expeditious and diligent fashion and in accordance with all applicable Legal Requirements. If any Net Proceeds are received by Borrower and may be retained by Borrower pursuant to the terms hereof, such Net Proceeds shall, until completion of the Restoration, be held by Borrower in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the costs and expenses of Restoration in accordance with the terms hereof.

5.3.2 Major Casualty or Condemnation.

(a) If a Casualty or Condemnation has occurred to the Property and the Net Proceeds are equal to or greater than the Restoration Threshold or the costs and expenses to complete the Restoration are equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions is satisfied:

(i) no Event of Default shall have occurred and remain outstanding;

(ii) (A) in the event the Net Proceeds are Insurance Proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements at the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are an Award, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) [Intentionally Omitted]

(iv) [Intentionally Omitted]

(v) Leases requiring payment of annual rent equal to not less than eighty percent (80%) of the Gross Income from Operations received by Borrower during the twelve (12) month period immediately preceding the Casualty or Condemnation and all Major Leases shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration, notwithstanding the occurrence of such Casualty or Condemnation;

(vi) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after the occurrence of such Casualty or Condemnation) and shall diligently pursue the same to satisfactory completion;

(vii) Lender shall be satisfied that any operating deficits and all scheduled payments under this Agreement and the other Loan Documents (including scheduled payments of principal and interest) will be paid during the period required for Restoration from (A) the Net Proceeds, (B) the Insurance Proceeds of the business or rental interruption or other loss of income insurance specified in Section 5.1.1(a)(iii) hereof or (C) other funds of Borrower;

(viii) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (A) the date that is six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the terms of any Lease, (C) the date, if any, required under the applicable Legal Requirements for such completion, or (D) 6 months prior to the expiration of the insurance coverage specified in Section 5.1.1(a)(iii) hereof;

(ix) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(x) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(xi) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;

(xii) the Management Agreement shall remain in full force and effect, notwithstanding the occurrence of such Casualty or Condemnation;

(xiii) [Intentionally Omitted];

(xiv) all Operating Agreements shall remain in full force and effect, notwithstanding the occurrence of such Casualty or Condemnation;

(xv) after giving effect to such Restoration, the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately following such Restoration shall not be less than the greater of (A) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the Closing Date, and (B) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding such Casualty or Condemnation;

(xvi) [Intentionally Omitted];

(xvii) Lender shall be satisfied that, upon the completion of the Restoration, the Loan-to-Value Ratio shall not be greater than the lesser of (A) the Loan-to-Value Ratio as of the Closing Date, and (B) the Loan-to-Value Ratio immediately prior to such Casualty or Condemnation;

(xviii) Borrower shall deliver, or cause to be delivered, to Lender a signed, detailed budget approved in writing by Borrower's architect or engineer stating all of the costs and expenses of completing the Restoration, which budget shall be acceptable to Lender; and

(xix) the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient, in Lender's reasonable judgment, to pay for all costs and expenses of the Restoration in full.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 5.3.2, shall constitute additional security for the Obligations. The Net Proceeds (including all interest earned thereon) shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (i) all requirements set forth in Section 5.3.2(a) have been satisfied, (ii) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (iii) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded by a surety company acceptable to Lender and the Rating Agencies to the satisfaction of Lender and discharged of record or, in the alternative, fully insured to the satisfaction of Lender by the title insurance company issuing the Title Insurance Policy.

(c) All plans and specifications in connection with the Restoration shall be subject to the prior approval of Lender and an independent architect or engineer selected by Lender (the "**Casualty Consultant**"). The plans and specifications shall require that the Restoration be completed in a first-class workmanlike manner at least equivalent to the quality and character of the original work in the Improvements so that, upon completion thereof, the Property shall be at least equal in value and general utility to the Property prior to the Casualty or Condemnation, as applicable (it being understood, however, that (i) Borrower shall not be obligated to restore the Property to the precise condition of the Property prior to such Casualty or Condemnation, as applicable, and (ii) in the case of a partial Condemnation, the Restoration shall be done to the extent reasonably practicable after taking into account the consequences of such partial Condemnation; provided that the Property shall be restored, to the extent reasonably practicable, to be of at least equal value and of substantially the same character as prior to the Casualty or Condemnation, as applicable). Borrower shall restore all Improvements such that

when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable Legal Requirements. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to the prior approval of Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with recovering, holding and disbursing the Net Proceeds for the Restoration (including, without limitation, reasonable attorneys' fees and expenses and the Casualty Consultant's fees and disbursements) shall be paid by Borrower.

(d) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs and expenses actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "**Casualty Retainage**" shall mean, as to each contractor, subcontractor or materialman engaged in the Restoration, an amount equal to ten percent (10%) of the costs and expenses actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 5.3.2(d), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 5.3.2 and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all applicable Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs and expenses of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which (i) the Casualty Consultant certifies to Lender that such contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, (ii) such contractor, subcontractor or materialman delivers lien waivers and evidence of payment in full of all sums due to such contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title insurance company issuing the Title Insurance Policy, and (iii) Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the Lien of the Security Instrument and evidence of payment of any premium payable in connection with such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the applicable contractor, subcontractor or materialman.

(e) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs and expenses which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held

by Lender and shall be disbursed for costs and expenses actually incurred in connection with the Restoration on the same terms and conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 5.3.2 shall constitute additional security for the Obligations.

(g) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after (i) the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 5.3.2 and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs and expenses incurred in connection with the Restoration have been paid in full shall be remitted by Lender to Borrower, provided that no Event of Default has occurred and remains outstanding; provided, however, that, in the case of a Condemnation, the amount returned to Borrower in accordance with this Section 5.3.2(g) shall not exceed the amount of the Net Proceeds Deficiency deposited by Borrower with the balance being applied to the Debt in the manner provided for in Section 5.3.2(h) hereof.

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 5.3.2(g) hereof may be retained and applied by Lender toward the payment of the Debt, whether or not then due and payable; in such order, proportion and priority as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve in its sole discretion.

(i) Notwithstanding anything to the contrary contained herein or in any other Loan Document, if the Loan is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Security Instrument following a Casualty or Condemnation (but taking into account any proposed Restoration of the remaining Property), the ratio of the unpaid principal balance of the Loan to the value of the remaining Property is greater than 125% (such value to be determined, in Lender's sole discretion, by any commercially reasonable method permitted to a REMIC Trust, based solely on real property and excluding any personal property and going concern value, if any), the principal balance of the Loan must be paid down by an amount equal to the least of the following amounts: (i) the Net Proceeds, (ii) the fair market value of the released property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan (as so determined by Lender) does not increase after the release, unless Lender receives an opinion of counsel that if such amount is not paid, the applicable Securitization will not fail to maintain its status as a REMIC Trust as a result of the related release of such portion of the Lien of the Security Instrument. If and to the extent the preceding sentence applies, only such amount of the Net Proceeds, if any, in excess of the amount required to pay down the principal balance of the Loan may be released for purposes of Restoration or released to Borrower as otherwise expressly provided in this Section 5.3.

VI. RESERVE FUNDS AND CASH MANAGEMENT

Section 6.1. Required Repair Funds.

6.1.1 Deposit of Required Repair Funds. Borrower shall perform the repairs at the Property as more particularly set forth on Schedule II hereto (such repairs, collectively, the

“**Required Repairs**”), and shall complete each of the Required Repairs on or before the respective deadline as set forth on Schedule II. On the Closing Date, Borrower shall deposit with Lender Twenty Thousand Five Hundred Thirty-Three and 75/100 Dollars (\$20,533.75), an amount equal to one hundred and twenty-five percent (125%) of the estimated cost to perform the Required Repairs as set forth on Schedule II. Amounts deposited pursuant to this Section 6.1.1 are referred to herein as the “**Required Repair Funds**” and the account in which such amounts are held by Lender shall hereinafter be referred to as the “Required Repair Account.”

6.1.2 Release of Required Repair Funds.

(a) With respect to any Required Repair which has been completed, Lender shall disburse to Borrower the Required Repair Funds upon satisfaction by Borrower of each of the following conditions: (i) Borrower shall submit a request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Required Repairs to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall have occurred and remain outstanding, (iii) Lender shall have received an Officer’s Certificate (A) stating that all Required Repairs to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with such Required Repairs, (B) identifying each Person that supplied materials or labor in connection with the Required Repairs to be funded by the requested disbursement, (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, and (D) stating that the Required Repairs to be funded by the requested disbursement have not been the subject of a previous disbursement, (iv) at Lender’s option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid for in full upon such disbursement to Borrower. Lender shall not be required to disburse Required Repair Funds more frequently than once each calendar month, and each disbursement of Required Repair Funds must be in an amount not less than the Minimum Disbursement Amount (or a lesser amount if the total remaining balance of Required Repair Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the Required Repair Account shall be made).

(b) Nothing in this Section 6.1 shall (i) make Lender responsible for making or completing any Required Repairs; (ii) obligate Lender to commence or proceed with any Required Repairs; (iii) require Lender to expend funds in addition to the Required Repair Funds to complete any Required Repairs; or (iv) obligate Lender to demand from Borrower additional sums to perform or complete any Required Repairs.

(c) If a disbursement of Required Repair Funds will exceed Twenty Five Thousand and No/100 Dollars (\$25,000), Lender may require an inspection of the Property prior to such disbursement in order to verify completion of the Required Repairs for which

reimbursement is sought. Lender may require that such inspection be conducted by an independent professional selected by Lender and may require a certificate of completion by an independent professional acceptable to Lender prior to such disbursement of Required Repair Funds.

(d) Borrower shall permit Lender and its agents and representatives (including, without limitation, Lender's engineer or architect) or third parties to enter onto the Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Required Repairs and all materials being used in connection therewith and to examine all plans, specifications and shop drawings relating to such Required Repairs. Borrower shall cause all contractors, subcontractors and materialmen to cooperate with Lender and its agents and representatives or such other Persons described above in connection with the inspections, if any, required by Lender in accordance with this Section 6.1.2.

(e) All Required Repairs and all materials, equipment, fixtures, or any other item comprising a part of any Required Repair shall be constructed, installed or completed, as applicable, free and clear of all liens, claims and other encumbrances not previously approved by Lender.

(f) All Required Repairs shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and all applicable insurance requirements (including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters).

(g) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided builder's risk insurance, workers' compensation insurance, public liability insurance and other insurance to the extent required by the applicable Legal Requirements in connection with any Required Repair. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with a non-contributing mortgagee clause (or its equivalent) making loss thereunder payable to Lender and its successors and/or assigns shall be so endorsed. At Lender's request, certified copies of such policies shall be delivered to Lender.

(h) All costs and expenses incurred by Lender in connection with holding and disbursing the Required Repair Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

6.1.3 Failure to Perform Required Repairs. It shall be an Event of Default if (a) Borrower does not complete the Required Repairs by the required deadline for each Required Repair as set forth on Schedule II, (b) Borrower does not satisfy each condition set forth in Section 6.1.2(a) hereof or (c) fails to comply with any other provision of this Section 6.1 and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of an Event of Default, Lender may, at its option, use the Required Repair Funds (or any portion thereof) to perform or complete any Required Repairs. Such right to withdraw and apply the Required Repair Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

Section 6.2. Tax Funds.

6.2.1 Deposits of Tax Funds. On the Closing Date, Borrower shall deposit with Lender an amount equal to Ninety Thousand Seven Hundred-Eleven and 30/100 Dollars (\$90,711.30) and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to one-twelfth (1/12) of the Taxes (the "**Monthly Tax Deposit**") that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates. Amounts deposited pursuant to this Section 6.2.1 are referred to herein as the "**Tax Funds**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "**Tax Account**." If at any time Lender reasonably determines that the Tax Funds will not be sufficient to pay the Taxes at least thirty (30) days prior to the respective due dates, Lender shall notify Borrower of such determination and the monthly deposits for Taxes shall be increased by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the respective due dates for the Taxes; provided that if Borrower receives notice of any such deficiency after the date that is thirty (30) days prior to the date that Taxes are due, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice.

6.2.2 Release of Tax Funds.

(a) Lender will apply the Tax Funds to payments of Taxes required to be made by Borrower pursuant to Section 4.1.2 hereof and under the Security Instrument. Borrower shall furnish Lender with all bills, statements and estimates for Taxes at least thirty (30) days prior to the date on which such Taxes first become payable. In making any payment relating to Taxes, Lender may do so according to any bill, statement or estimate procured from the public office (with respect to Taxes) without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax Funds shall exceed the amounts due for Taxes, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax Funds. Any Tax Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Tax Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

Section 6.3. Insurance Funds.

6.3.1 Deposits of Insurance Funds. On the Closing Date, Borrower shall deposit with Lender an amount equal to Fifty Three Thousand Nine Hundred Five and 04/100 Dollars (\$53,905.04) and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to one-twelfth (1/12) of the Insurance Premiums (the "**Monthly Insurance Deposit**") that Lender estimates will be payable for the renewal of the coverages afforded by the Policies upon the expiration thereof in order to accumulate sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies. Amounts deposited pursuant to this Section 6.3.1 are referred to herein as the "**Insurance Funds**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the

“Insurance Account.” If at any time Lender reasonably determines that the Insurance Funds will not be sufficient to pay the Insurance Premiums at least thirty (30) days prior to the expiration of the Policies, Lender shall notify Borrower of such determination and the monthly deposits for Insurance Premiums shall be increased by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the Policies; provided that if Borrower receives notice of any such deficiency after the date that is thirty (30) days prior to expiration of the Policies, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice.

6.3.2 Release of Insurance Funds.

(a) Lender will apply the Insurance Funds to payments of Insurance Premiums for the Policies required to be maintained by Borrower pursuant to Section 5.1.1 hereof. Borrower shall furnish Lender with all bills, invoices and statements for Insurance Premiums at least thirty (30) days prior to the date on which such Insurance Premiums first become payable. In making any payment relating to Insurance Premiums, Lender may do so according to any bill, invoice or statement procured from the insurance company or its agent, without inquiry into the accuracy of such bill, invoice or statement. If the amount of the Insurance Funds shall exceed the amounts due for Insurance Premiums, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Insurance Funds. Any Insurance Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Insurance Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

Section 6.4. Capital Expenditure Funds.

6.4.1 Deposits of Capital Expenditure Funds. On the Closing Date, Borrower shall deposit with Lender an amount equal to (\$0) and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to Three Thousand Three Hundred Forty-Seven and 85/100 Dollars (\$3,347.85) (the **“Monthly Capital Expenditure Deposit”**) for annual Capital Expenditures set forth in the Approved Annual Budget or otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed. Amounts deposited pursuant to this Section 6.4.1 are referred to herein as the **“Capital Expenditure Funds”** and the account in which such amounts are held by Lender shall hereinafter be referred to as the **“Capital Expenditure Account.”** Lender may reassess its estimate of the amount necessary for Capital Expenditures from time to time and may require Borrower to increase the monthly deposits required pursuant to this Section 6.4.1 upon thirty (30) days’ notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary for proper maintenance and operation of the Property.

6.4.2 Release of Capital Expenditure Funds.

(a) Lender shall disburse Capital Expenditure Funds only for Capital Expenditures.

(b) Lender shall disburse to Borrower the Capital Expenditure Funds upon satisfaction by Borrower of each of the following conditions: (i) Borrower shall submit a request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Capital Expenditures to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall have occurred and remain outstanding, (iii) Lender shall have received an Officer's Certificate (A) stating that all items to be funded by the requested disbursement are Capital Expenditures, (B) stating that all Capital Expenditures to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with such Capital Expenditures, (C) identifying each Person that supplied materials or labor in connection with the Capital Expenditures to be funded by the requested disbursement, (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, and (E) stating that the Capital Expenditures to be funded by the requested disbursement have not been the subject of a previous disbursement, (iv) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) Lender shall have received such other evidence as Lender shall reasonably request that the Capital Expenditures to be funded by the requested disbursement have been completed and are paid for or will be paid for in full upon such disbursement to Borrower. Lender shall not be required to disburse Capital Expenditure Funds more frequently than once each calendar month, and each disbursement of Capital Expenditure Funds must be in an amount not less than the Minimum Disbursement Amount (or a lesser amount if the total remaining balance of Capital Expenditure Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the Capital Expenditure Account shall be made).

(c) Nothing in this Section 6.4 shall (i) make Lender responsible for making or completing any Capital Expenditure Work; (ii) obligate Lender to commence or proceed with any Capital Expenditure Work; (iii) require Lender to expend funds in addition to the Capital Expenditure Funds to complete any Capital Expenditure Work; or (iv) obligate Lender to demand from Borrower additional sums to perform or complete any Capital Expenditure Work.

(d) If a disbursement of Capital Expenditure Funds will exceed Twenty Five Thousand and No/100 Dollars (\$25,000), Lender may require an inspection of the Property prior to such disbursement in order to verify completion of the Capital Expenditure Work for which reimbursement is sought. Lender may require that such inspection be conducted by an independent professional selected by Lender and may require a certificate of completion by an independent professional acceptable to Lender prior to such disbursement of Capital Expenditure Funds.

(e) Borrower shall permit Lender and its agents and representatives (including, without limitation, Lender's engineer or architect) or third parties to enter onto the Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Capital Expenditure Work and all materials being used in connection therewith and to examine all plans, specifications and shop drawings relating to such Capital

Expenditure Work. Borrower shall cause all contractors, subcontractors and materialmen to cooperate with Lender and its agents and representatives or such other Persons described above in connection with the inspections, if any, required by Lender in accordance with this Section 6.4.2.

(f) All Capital Expenditure Works and all materials, equipment, fixtures, or any other item comprising a part of any Capital Expenditure Work shall be constructed, installed or completed, as applicable, free and clear of all liens, claims and other encumbrances not previously approved by Lender.

(g) All Capital Expenditure Works shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and all applicable insurance requirements (including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters).

(h) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided builder's risk insurance, workers' compensation insurance, public liability insurance and other insurance to the extent required by the applicable Legal Requirements in connection with any Capital Expenditure Work. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with a non-contributing mortgagee clause (or its equivalent) making loss thereunder payable to Lender and its successors and/or assigns shall be so endorsed. At Lender's request, certified copies of such policies shall be delivered to Lender.

(i) Capital Expenditure Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(j) All costs and expenses incurred by Lender in connection with holding and disbursing the Capital Expenditure Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

6.4.3 Failure to Perform Capital Expenditure Works. It shall be an Event of Default if Borrower fails to comply with any provision of this Section 6.4 and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of an Event of Default, Lender may, at its option, use the Capital Expenditure Funds (or any portion thereof) to perform or complete any Capital Expenditure Work as provided in Section 6.4.2 hereof or any other repair or replacement to the Property. Such right to withdraw and apply the Capital Expenditure Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

Section 6.5. Rollover Funds.

6.5.1 Deposits of Rollover Funds.

(a) During a Hilton Trigger Event, Borrower shall deposit with Lender an amount equal to Eight Thousand Three Hundred Twelve and 50/100 Dollars (\$8,312.50) (the "Monthly Rollover Deposit") for tenant improvements and leasing commissions that may be incurred following the date hereof. Amounts deposited pursuant to this Section 6.5.1 are referred to herein as the "Rollover Funds" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "Rollover Account."

(b) In addition to the deposits required under Section 6.5.1(a), Borrower shall deposit, or cause to be deposited, with Lender all amounts paid to Borrower in connection with (i) any modification or amendment of any Lease, (ii) any consent (including any consent to an assignment or sublease of any Lease) or waiver by Borrower of any term, condition or provision under any Lease, (iii) any settlement of claims of Borrower against third parties in connection with any Lease, (iv) any rejection, termination, surrender, cancellation or buy-out of any Lease (including in connection with any Bankruptcy Action and including any payment relating to unamortized tenant improvements and/or leasing commissions), and (v) any other extraordinary event pursuant to which Borrower receives payment (in whatever form) derived from or generated by the use, ownership or operation of the Property not otherwise covered by this Agreement or the Cash Management Agreement (collectively, the "Extraordinary Lease Payments"), in each case, with respect to clauses (i), (ii), (iii), (iv) and (v), net of reasonable, out-of-pocket costs and expenses, if any, incurred by Borrower. In connection with any amount required to be deposited with Lender pursuant to this Section 6.5.1(b), Borrower shall provide prior notice to Lender of the amount and the nature thereof and otherwise cooperate with Lender to ensure that such amounts are properly accounted for and held as Rollover Funds.

6.5.2 Release of Rollover Funds.

(a) Lender shall disburse to Borrower the Rollover Funds upon satisfaction by Borrower of each of the following conditions: (i) Borrower shall submit a request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the tenant improvement costs and leasing commissions to be paid or reimbursed, (ii) on the date such request is received by Lender and on the date such payment or reimbursement is to be made, no Default or Event of Default shall have occurred and remain outstanding, (iii) Lender shall have received and, if applicable, approved the Lease in respect of which Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions, (iv) Lender shall have received and, if applicable, approved a budget for tenant improvement costs and a schedule of leasing commission payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (v) Lender shall have received an Officer's Certificate (A) stating that all tenant improvements at the Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with such tenant improvements, (B) identifying (1) each Person that supplied materials or labor in connection with the tenant improvements to be funded by the requested disbursement and (2) each Person that provided brokerage services in connection with the leasing commissions to be funded by the requested disbursement, (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, and (D) stating that the tenant improvement costs and/or leasing commission payments to be funded have not been the subject of a previous disbursement, (vi) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, (vii) Lender shall have received an estoppel certificate from the

applicable Tenant stating that (A) (1) all work required to be performed by Borrower have been completed in accordance with the applicable Lease and have been accepted by such Tenant or (2) all work required to be performed by such Tenant have been completed and a reimbursement of the amount specified in such estoppel certificate is due to such Tenant pursuant to its Lease and (B) such Tenant is in occupancy and paying full unabated rent or has taken possession of the demised premises, and (viii) Lender shall have received such other evidence as Lender may reasonably request that (A) the tenant improvements at the Property to be funded by the requested disbursement have been completed and are paid for or will be paid for in full upon such disbursement to Borrower and (B) the leasing commissions to be funded by the requested disbursement have been paid for or will be paid for in full upon such disbursement to Borrower. Lender shall not be required to disburse Rollover Funds more frequently than once each calendar month, and each disbursement of the Rollover Funds must be in an amount not less than the Minimum Disbursement Amount (or a lesser amount if the total remaining balance of Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the Rollover Account shall be made). Any Rollover Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Rollover Funds shall be paid by Borrower.

Section 6.6. Hilton Rollover Funds

6.6.1 Deposit of Hilton Rollover Funds.

(a) Upon the occurrence and during the continuance of a Hilton Trigger Event, and continuing until the occurrence of a Hilton Trigger Event Cure, on each Monthly Payment Date, all Excess Cash Flow shall be deposited with Lender (the "**Monthly Hilton Rollover Deposit**") for tenant improvements and leasing commissions that may be incurred by Borrower following the occurrence of an Acceptable Hilton Lease Extension or a Hilton Space Re-tenanting Event with respect to the space demised to Hilton pursuant to the Hilton Lease. Amounts deposited pursuant to this Section 6.6.1 are referred to herein as the "**Hilton Rollover Funds**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "**Hilton Rollover Account**."

(b) In addition to the deposits required under Section 6.6.1(a), Borrower shall deposit, or cause to be deposited, with Lender all amounts paid to Borrower in connection with (i) any modification or amendment of the Hilton Lease, (ii) any consent (including any consent to an assignment or sublease of the Hilton Lease) or waiver by Borrower of any term, condition or provision under the Hilton Lease, (iii) any settlement of claims of Borrower against third parties in connection with the Hilton Lease, (iv) any rejection, termination, surrender, cancellation or buy-out of the Hilton Lease (including in connection with any Bankruptcy Action and including any payment relating to unamortized tenant improvements and/or leasing commissions), and (v) any other extraordinary event pursuant to which Borrower receives payment (in whatever form) derived from or generated by Hilton or with respect to the Hilton Lease not otherwise covered by this Agreement or the Cash Management Agreement (collectively, the "**Hilton Extraordinary Lease Payments**"), in each case, with respect to clauses (i), (ii), (iii), (iv) and (v), net of reasonable, out-of-pocket costs and expenses, if any,

incurred by Borrower. In connection with any amount required to be deposited with Lender pursuant to this Section 6.6.1(b), Borrower shall provide prior notice to Lender of the amount and the nature thereof and otherwise cooperate with Lender to ensure that such amounts are properly accounted for and held as Hilton Rollover Funds.

6.6.2 Release of Hilton Rollover Funds.

(a) Upon the occurrence of Hilton Trigger Event Cure caused solely by clause (v) in the definition thereof, Lender shall disburse to Borrower the Hilton Rollover Funds on deposit in the Hilton Rollover Account upon satisfaction by Borrower of each of the following conditions: (i) either an Acceptable Hilton Lease Extension or Hilton Re-tenanting Event shall have occurred, (ii) Borrower shall submit a request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the tenant improvement costs and leasing commissions to be paid or reimbursed, (iii) on the date such request is received by Lender and on the date such payment or reimbursement is to be made, no Event of Default shall have occurred and remain outstanding, (iv) regarding a Hilton Re-tenanting Event, Lender shall have received and approved the new Lease for the space formerly leased to Hilton pursuant to the applicable Hilton Lease in respect of which Borrower is obligated to pay or reimburse certain tenant improvement costs and leasing commissions, (v) Lender shall have received and, if applicable, approved a budget for tenant improvement costs and a schedule of leasing commission payments and the requested disbursement will be used to pay all or a portion of such costs and payments, (vi) Lender shall have received an Officer's Certificate (A) stating that all tenant improvements at the Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with such tenant improvements, (B) identifying (1) each Person that supplied materials or labor in connection with the tenant improvements to be funded by the requested disbursement and (2) each Person that provided brokerage services in connection with the leasing commissions to be funded by the requested disbursement, (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, and (D) stating that the tenant improvement costs and/or leasing commission payments to be funded have not been the subject of a previous disbursement, (vii) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, (viii) regarding a Hilton Re-tenanting Event, with respect to the last disbursement for the applicable leased space for which the tenant improvements or leasing commissions are being funded pursuant to this Section 6.6.2, Lender shall have received an estoppel certificate from the applicable replacement Tenant or Tenants stating that (A) (1) all work required to be performed by Borrower has been completed in accordance with the applicable Lease and has been accepted by such Tenant or (2) all work required to be performed by such Tenant has been completed and a reimbursement of the amount specified in such estoppel certificate is due to such Tenant pursuant to its Lease and (B) such Tenant is in occupancy and paying full unabated rent without offset or has taken possession of the demised premises and is paying full unabated rent without offset, (ix) regarding an Acceptable Hilton Lease Extension, with respect to the last disbursement for the applicable leased space for which the tenant improvements or leasing commissions are being funded pursuant to this Section 6.6.2, Lender shall have received an estoppel certificate

from Hilton stating that (A) (1) all work required to be performed by Borrower has been completed in accordance with the applicable Lease and has been accepted by Hilton or (2) all work required to be performed by Hilton has been completed and a reimbursement of the amount specified in such estoppel certificate is due to Hilton pursuant to its Lease and (B) Hilton is in occupancy and paying full unabated rent without offset or has taken possession of the demised premises and is paying full unabated rent without offset, (x) Lender shall have received such other evidence as Lender may reasonably request that (A) the tenant improvements at the Property to be funded by the requested disbursement have been completed and are paid for or will be paid for in full upon such disbursement to Borrower and (B) the leasing commissions to be funded by the requested disbursement have been paid for or will be paid for in full upon such disbursement to Borrower. Lender shall not be required to disburse Hilton Rollover Funds more frequently than once each calendar month, and each disbursement of the Hilton Rollover Funds must be in an amount not less than the Minimum Disbursement Amount (or a lesser amount if the total remaining balance of Hilton Rollover Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the Hilton Rollover Account shall be made), (xi) no other Hilton Trigger Event shall then be in effect and continuing, and (xii) no Cash Sweep Period shall then be in effect and continuing.

(b) Upon the occurrence of Hilton Trigger Event Cure caused solely by clauses (i), (ii), (iii) and/or (iv) in the definition thereof, Lender shall disburse to Borrower the Hilton Rollover Funds on deposit in the Hilton Rollover Account upon satisfaction by Borrower of each of the following conditions: (i) no other Hilton Trigger Event shall then be in effect and continuing, (ii) no Cash Sweep Period shall then be in effect and continuing, and (iii) no Event of Default shall have occurred and remain outstanding.

(c) All reasonable out-of-pocket costs and expenses incurred by Lender in connection with holding and disbursing the Hilton Rollover Funds shall be paid by Borrower. Any Hilton Rollover Funds remaining after the Debt has been paid in full returned to Borrower.

Section 6.7. Excess Cash Flow Funds.

6.7.1 Deposits of Excess Cash Flow Funds. During a Cash Sweep Event Period, Borrower shall deposit with Lender all Excess Cash Flow, which sums shall be held by Lender as additional security for the Loan. Amounts so deposited shall hereinafter be referred to as the "Excess Cash Flow Funds" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "Excess Cash Flow Account."

6.7.2 Release of Excess Cash Flow Funds.

(a) Upon the termination of a Cash Sweep Event Period and provided that no other Cash Sweep Event shall have occurred and remain outstanding, all funds on deposit in the Excess Cash Flow Account shall be deposited into the Cash Management Account and applied in accordance with this Agreement and the Cash Management Agreement.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Excess Cash Flow Funds shall be paid by Borrower.

Section 6.8. Reserve Funds.

6.8.1 Security Interest. Borrower hereby pledges to Lender, and grants a security interest in, any and all monies now or hereafter deposited in the Reserve Funds as additional security for the performance of the Obligations. Until expended or applied as provided in this Agreement, the Reserve Funds shall constitute additional security for the performance of the Obligations. Lender shall have no obligation to release any of the Reserve Funds while any Default or Event of Default has occurred and remains outstanding. Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Reserve Funds to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion. Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

6.8.2 Investments; Income Taxes. The Reserve Funds shall be held in Lender's name and may be commingled with Lender's own funds at financial institutions selected by Lender in its sole discretion. The Reserve Funds shall be held in an Eligible Account and may be invested in Permitted Investments as directed by Lender. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall deposit with Lender an amount equal to the actual losses sustained on the investment of any funds constituting the Reserve Funds in Permitted Investments within one (1) Business Day of Lender's notice. All interest on the Tax Funds and Insurance Funds shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. All interest on all other Reserve Funds shall be added to and become a part thereof; Borrower shall report on its federal, state and local income tax returns all interest or income on such Reserve Funds credited or paid to Borrower.

6.8.3 Indemnity. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including reasonable attorneys' fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid or reimbursed from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains outstanding.

Section 6.9. Termination Funds.

6.9.1 Deposit of Termination Funds. Upon the exercise by Hilton of the Termination Right, Borrower shall deposit with Lender the Termination Fee. Amounts deposited pursuant to this [Section 6.9.1](#) are referred to herein as the "**Termination Funds**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "**Termination Account**."

6.9.2 Release of Termination Funds.

(a) Lender shall disburse to Borrower the Termination Funds with respect to tenant improvement costs and leasing commissions to be paid with respect to the Terminated Space only upon Borrower's satisfaction of the terms and provisions of Section 6.5.2(a) hereof.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Termination Funds shall be paid by Borrower.

(c) Provided no Event of Default is continuing, any Termination Funds remaining after disbursement in accordance with Section 6.9.2(a) shall, once the Terminated Space Re-tenanting Event occurs, and provided further that no Hilton Leasing Trigger Event, Hilton Trigger Event or other Cash Management Trigger Event is then continuing, be released to Borrower.

Section 6.10. Hilton Allowance Funds.

6.10.1 Deposit of Hilton Allowance. On the Closing Date, Borrower shall deposit with Lender the Hilton Allowance. Amounts deposited pursuant to this Section 6.10.1 are referred to herein as the "**Hilton Allowance Funds**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "**Hilton Allowance Account**."

6.10.2 Release of Hilton Allowance Funds.

(a) Lender shall disburse to Borrower the Hilton Allowance Funds with respect to tenant improvement costs to be paid with respect to the Hilton Space only upon Borrower's and Hilton's satisfaction of the terms and provisions for payment of such funds as set forth in the Hilton Lease. Lender, at its option, may require Borrower to use its commercially reasonable efforts to obtain from Hilton an estoppel certificate certifying that all such improvements have been constructed in accordance and in compliance with the terms and conditions of the Hilton Lease.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Hilton Allowance Funds shall be paid by Borrower.

(c) Provided no Event of Default is continuing, any Hilton Allowance Funds remaining after disbursement in accordance with Section 6.10.2(a) shall be released to Borrower for payment to Manager pursuant to the purchase and sale agreement between Borrower and Manager.

VII. PROPERTY MANAGEMENT

Section 7.1. Management Agreement.

Borrower shall cause each Individual Property to be operated in accordance with the Management Agreement. Borrower shall (a) diligently perform and observe all of the terms, covenants and conditions of the Management Agreement on the part of Borrower to be performed and observed, (b) promptly notify Lender of any default under the Management

Agreement of which it is aware, (c) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, report and estimate received by it under the Management Agreement and (d) promptly enforce the performance and observance of all of the terms, covenants and conditions required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner. If Borrower shall default in the performance or observance of any term, covenant or condition of the Management Agreement on the part of Borrower to be performed or observed, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its obligations hereunder, under the other Loan Documents or under the Management Agreement, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause the terms, covenants and conditions of the Management Agreement on the part of Borrower to be performed or observed in all material respects.

Section 7.2. Prohibition Against Termination or Modification.

(a) Borrower shall not, without prior consent of Lender, (i) surrender, terminate, cancel, modify, renew, amend, or extend the Management Agreement; provided that Borrower may, without Lender's consent, replace Manager with a Qualified Manager pursuant to a Replacement Management Agreement, (ii) reduce or consent to the reduction of the term of the Management Agreement, (iii) increase or consent to the increase of the amount of any fees or other charges under the Management Agreement, or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In connection with the replacement of Manager with a Qualified Manager, Borrower shall execute and cause Qualified Manager to execute an assignment of management agreement and subordination of management fees in the form then used by Lender.

(b) In the event that the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with a Qualified Manager.

(c) Upon the occurrence and during the continuation of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

Section 7.3. Replacement of Manager.

Lender shall have the right to require Borrower to replace Manager, as manager under each Management Agreement with a Qualified Manager which is not an Affiliate of, but is chosen by, Borrower upon the occurrence of any one or more of the following events: (a) at any time following the occurrence of an Event of Default, (b) if Manager shall be in default under any Management Agreement beyond any applicable notice and cure period, (c) if Manager shall become insolvent or a debtor in any Bankruptcy Action, (d) if at any time Manager has engaged

in gross negligence, fraud, willful misconduct or misappropriation of funds, and/or (e) if at any time the Debt Service Coverage Ratio (based upon the trailing twelve (12) month period immediately preceding the date of such determination is less than 1.15 to 1.0.

Section 7.4. Matters Concerning Manager.

Without limiting the generality of the terms set forth in Section 7.3 above, if (a) the Debt has been accelerated pursuant to Section 10.1(b) hereof, (b) Manager shall become insolvent or a debtor in any Bankruptcy Action or (c) an event of default occurs under any Management Agreement, Borrower shall, at Lender's request, terminate each Management Agreement and replace Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

VIII. TRANSFERS

Section 8.1. Transfer or Encumbrance of Property.

(a) Without the prior consent of Lender, neither Borrower nor any Restricted Party shall do any of the following (each, a "**Transfer**"): sell, transfer, convey, assign, mortgage, pledge, encumber, alienate, grant a Lien on, grant any option with respect to or grant any other interest in the Property, any part thereof or any interest therein (including any legal, beneficial or economic interest in Borrower or any Restricted Party), directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record, other than Permitted Transfers.

(b) A Transfer shall include (i) an installment sales agreement wherein Borrower agrees to sell the Property, any part thereof or any interest therein for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if Borrower or any Restricted Party is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock such that such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation; (iv) if Borrower or any Restricted Party is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member, the voluntary or involuntary transfer of the partnership interest of any general partner, managing partner or limited partner, the creation or issuance of new limited partnership interests, the voluntary or involuntary transfer of the interest of any joint venturer or member or the creation or issuance of new non-managing member interests; and (v) if Borrower or any Restricted Party is a trust or nominee trust, the voluntary or involuntary transfer of the legal or beneficial interest in such trust or nominee trust or the creation or issuance of new legal or beneficial interests.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder or under the other Loan Documents in order to declare the Debt immediately due and payable upon a Transfer (other than a Permitted Transfer) without Lender's prior consent. This provision shall apply to every Transfer regardless of whether voluntary or not, and whether or not Lender has consented to any previous Transfer.

(d) Lender's consent to one Transfer shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any Transfer made in contravention of this Section 8.1 shall be null and void and of no force and effect.

(e) Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and/or documentation of any proposed Transfer. If required by Lender, Borrower shall deposit with Lender an amount equal to Lender's anticipated costs and expenses in evaluating any proposed Transfer.

(f) No consent to any assumption of the Loan shall occur on or before the first (1st) anniversary of the first (1st) Monthly Payment Date. Thereafter, Lender's consent to a Transfer of the Property and the assumption of the Loan shall not be unreasonably withheld after consideration of all relevant factors and provided that the following conditions are satisfied:

(i) Lender shall have received a notice from Borrower requesting Lender's consent to such Transfer not less than sixty (60) days prior to the proposed date of such Transfer;

(ii) No Default or Event of Default shall have occurred and remain outstanding;

(iii) The proposed transferee ("**Transferee**") shall be a corporation, partnership or limited liability company that qualifies as a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies (including, without limitation, criteria applicable to Transferee's SPE Constituent Entities);

(iv) The Organizational Documents of Transferee and Transferee's SPE Constituent Entities shall be reasonably satisfactory to Lender;

(v) Neither any Transferee's Sponsor, Transferee nor any other Person owned or controlled, directly or indirectly, by Transferee's Sponsors shall have been a party to any Bankruptcy Action or taken advantage of any Bankruptcy Law or any law for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Neither any Transferee's Sponsor, Transferee nor any other Person owned or controlled, directly or indirectly, by Transferee's Sponsors shall have defaulted under its obligations with respect to any Indebtedness in a manner which is not reasonably acceptable to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against any Transferee's Sponsor, Transferee or any other Person owned or controlled, directly or indirectly, by Transferee's Sponsors which is not reasonably acceptable to Lender;

(viii) Transferee and Transferee's Sponsors shall, as of the date of such Transfer, have an aggregate net worth and liquidity reasonably satisfactory to Lender;

(ix) Transferee and Transferee's Sponsors (together with Transferee's proposed property manager) shall be experienced owners and operators of properties similar in location, size, class, use, operation and value as the Property, as evidenced by financial statements and other information reasonably satisfactory to Lender (it being understood and agreed that Lender reserves the right to approve Transferee without approving its proposed property manager);

(x) If the Management Agreement will be terminated as a result of such Transfer, the Property shall be managed by a Qualified Manager in accordance with a Replacement Management Agreement;

(xi) [Intentionally Omitted];

(xii) Transferee and Transferee's SPE Constituent Entities shall have delivered all agreements, certificates and opinions reasonably required by Lender (including, if applicable, an amendment to Section 3.1.24 hereof to incorporate necessary changes based on differences in the organizational structures of Borrower and Transferee);

(xiii) No Default or Event of Default shall occur as a result of such Transfer;

(xiv) Transferee shall have assumed all obligations of Borrower under the Loan Documents pursuant to an assumption agreement in form and substance reasonably satisfactory to Lender;

(xv) Borrower shall have delivered, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any Liens other than those contained in the Title Insurance Policy issued on the date hereof and the Permitted Encumbrances;

(xvi) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall (A) have assumed all obligations of Guarantor under the Guaranty and the Environmental Indemnity or (B) have executed a replacement guaranty and a replacement environmental indemnity in form and substance reasonably satisfactory to Lender;

(xvii) If required by Lender or the Rating Agencies, Borrower or Transferee, at its sole cost and expense, shall have delivered a new bankruptcy non-consolidation opinion reflecting such Transfer reasonably acceptable to Lender and acceptable to the Rating Agencies;

(xviii) If required by Lender, Borrower shall have delivered a Rating Agency Confirmation as to such Transfer and Transferee;

(xix) Borrower shall have paid to Lender an assumption fee equal to 30/100ths of one percent (0.30%) of the Outstanding Principal Balance for the initial Transfer and one percent (1%) of the Outstanding Principal Balance for each subsequent Transfer; and

(xx) Borrower shall have paid all reasonable out-of-pocket costs and expenses incurred in connection with such Transfer (including reasonable fees and disbursements of Lender's counsel and fees, costs and expenses of the Rating Agencies).

(g) As used in this Section 8.1, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms "controlled" and "controlling" shall have correlative meanings.

Section 8.2. Permitted Transfers of Interests in Borrower

Notwithstanding anything to the contrary contained in Section 8.1 hereof, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) in the aggregate of the direct or indirect ownership interests in any Restricted Party; provided that the following conditions are satisfied: (a) no Default or Event of Default shall have occurred and remain outstanding or shall occur solely as a result of such Transfer, (b) such Transfer shall not (i) cause the transferee, together with its Affiliates, to acquire control of any Restricted Party, (ii) result in any Restricted Party no longer being controlled by Key Principal, or (iii) cause the transferee, together with its Affiliates, to increase its direct or indirect interest in any Restricted Party to an amount which exceeds forty-nine percent (49%) in the aggregate, (c) to the extent the transferee owns twenty percent (20%) or more of the direct or indirect interests in any Restricted Party immediately following such Transfer (provided that such Transferee did not own 20% or more of the direct or indirect ownership interests in such Restricted Party as of the Closing Date), Borrower shall deliver, at Borrower's sole cost and expense, customary searches (credit, judgment, lien, bankruptcy, etc.) reasonably acceptable to Lender with respect to such transferee and its Affiliates as Lender may reasonably require, (d) after giving effect to such Transfer, Key Principal shall continue to own, directly or indirectly, at least fifty-one percent (51%) of all legal, beneficial and economic interests in each Restricted Party, (e) the Property shall continue to be managed by Manager or Qualified Manager, (f) Borrower shall give Lender notice of such Transfer request, together with copies of all instruments effecting such Transfer and copies of any Organizational Documents that Lender shall require, not less than thirty (30) days prior to the proposed date of such Transfer, and (g) the legal and financial structure of Borrower and its stockholders, partners or members, as applicable, and the single purpose nature and bankruptcy remoteness of Borrower and its stockholders, partners or members, as applicable, after such Transfer, shall satisfy Lender's the then current applicable underwriting criteria and requirements. As used in this Section 8.2, the term "control" means the possession, directly or indirectly, of the power to direct

or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms “controlled” and “controlling” shall have correlative meanings.

IX. SALE AND SECURITIZATION OF MORTGAGE

Section 9.1. Sale of Mortgage and Securitization.

(a) Lender shall have the right (i) to sell or otherwise transfer the Loan as a whole loan or sell or otherwise transfer any portion thereof or any interest therein, (ii) to sell participation interests in the Loan or (iii) to securitize the Loan or any portion thereof or any interest therein in one or more private or public securitizations. (The transactions referred to in clauses (i), (ii) and (iii) are each hereinafter referred to as a “**Secondary Market Transaction**” and the transaction referred to in clause (iii) shall hereinafter be referred to as a “**Securitization**.” Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as “**Securities**.”)

(b) If requested by Lender, Borrower shall assist Lender in satisfying the market standards to which Lender customarily adheres or which may be required in the marketplace, by the Rating Agencies or by any Legal Requirements in connection with any Secondary Market Transactions (including any Exchange Act Filings or any report that is required to be made “available” to holders of the Securities under Regulation AB or applicable Legal Requirements), including, without limitation, to:

(i) (A) provide updated financial and other information with respect to the Property, the business operated at the Property, Borrower, Guarantor, any Affiliate of Borrower or Guarantor and Manager (including, without limitation, the information set forth on Schedule V hereto), (B) provide updated budgets and rent rolls (including itemized percentage of floor area occupied and percentage of aggregate base rent for each Tenant) relating to the Property and (C) provide updated appraisals, market studies, environmental audits, reviews and reports (Phase I’s and, if appropriate, Phase II’s), property condition reports and other due diligence investigations of the Property (the information required under clauses (A), (B) and (C) shall hereinafter be referred to collectively as the “**Updated Information**”), together with appropriate verification of the Updated Information through letters of auditors, certificates of third party providers or opinions of counsel acceptable to Lender and the Rating Agencies;

(ii) provide opinions of counsel, which may be relied upon by Lender, the NRSROs and their respective counsel, agents and representatives, as to bankruptcy non-consolidation (if required by Lender or the Rating Agencies), fraudulent conveyance, and “true sale” or any other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Property, Borrower, Guarantor and any Affiliate of Borrower or Guarantor, which counsel and opinions shall be satisfactory to Lender and the Rating Agencies;

(iii) provide, and cause to be provided, updated representations and warranties made in the Loan Documents and make, and cause to be made, such additional

representations and warranties as may be requested by Lender or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof;

(iv) execute, and cause to be executed, such amendments, replacements or other modifications to Borrower's Organizational Documents or the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Secondary Market Transactions; provided, however, that Borrower shall not be required to amend, restate or otherwise modify any Loan Document if such amendment, restatement or other modification would (A) increase the initial weighted average interest rate or change the amortization of principal set forth herein or in the Note (except that the weighted average interest rate or the amortization of principal may subsequently change due to involuntary prepayments or if an Event of Default shall occur) or (B) amend or otherwise modify any other material economic term of the Loan; and

(v) attend management meetings, provide access to the Property and conduct tours of the Property; and

(vi) provide, and cause to be provided, certificates or other evidence of reliance satisfactory to Lender and the Rating Agencies with respect to any information or third party reports obtained in connection with the origination of the Loan or any Updated Information from Borrower, Guarantor, any Affiliate of Borrower or Guarantor, Manager and any accountants, appraisers, engineers, environmental assessment experts and other experts or third party providers of such information, reports or Updated Information.

(c) If, at the time one or more Disclosure Documents are being prepared for or in connection with a Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower (including any guarantor or other Person that is directly or indirectly committed by contract or otherwise to make payments on all or a part of the Loan) collectively, or the Property alone or the Property and Related Properties collectively, will be a Significant Obligor, Borrower shall furnish to Lender upon request the following financial information:

(i) if Lender expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, net operating income for the Property and the Related Properties for the most recent Fiscal Year and interim period as required under Item 1112(b)(1) of Regulation AB (or, if the Loan is not treated as a non-recourse loan under Instruction 3 for Item 1101(k) of Regulation AB, selected financial data meeting the requirements and covering the time periods specified in Item 301 of Regulation S-K and Item 1112(b)(1) of Regulation AB), or

(ii) if Lender expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, the financial statements required under Item 1112(b)(2)

of Regulation AB (which includes, but may not be limited to, a balance sheet with respect to the entity that Lender determines to be a Significant Obligor for the two most recent Fiscal Years and applicable interim periods, meeting the requirements of Rule 3-01 of Regulation S-X, and statements of income and statements of cash flows with respect to the Property for the three most recent Fiscal Years and applicable interim periods, meeting the requirements of Rule 3-02 of Regulation S-X (or if Lender determines that the Property is the Significant Obligor and the Property (other than properties that are hotels, nursing homes, or other properties that would be deemed to constitute a business and not real estate under Regulation S-X or other legal requirements) was acquired from an unaffiliated third party and the other conditions set forth in Rule 3-14 of Regulation S-X have been met, the financial statements required by Rule 3-14 of Regulation S-X)).

(d) Further, if requested by Lender, Borrower shall, promptly upon Lender's request, furnish to Lender financial data or financial statements meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, for any tenant of the Property if, in connection with a Securitization, Lender expects there to be, as of the cut-off date for such Securitization, a concentration with respect to such tenant or group of Affiliated tenants within all of the mortgage loans included or expected to be included in the Securitization such that such tenant or group of Affiliated tenants would constitute a Significant Obligor. Borrower shall furnish to Lender, on an ongoing basis, financial data or financial statements with respect to such tenants meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, but only for so long as such entity or entities are a Significant Obligor and either (i) Exchange Act Filings in connection with or relating to the Securitization are required to be made under applicable Legal Requirements or (ii) comparable information is required to otherwise be "available" to holders of the Securities under Regulation AB or applicable Legal Requirements.

(e) If Lender determines that Borrower alone or Borrower and one or more Affiliates of any Borrower collectively, or the Property alone or the Property and Related Properties collectively, are a Significant Obligor, then Borrower shall furnish to Lender, on an ongoing basis, selected financial data or financial statements meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, but only for so long as such entity or entities are a Significant Obligor and either (i) Exchange Act Filings are required to be made under applicable Legal Requirements or (ii) comparable information is required to otherwise be "available" to holders of the Securities under Regulation AB or applicable Legal Requirements.

(f) Any financial data or financial statements provided pursuant to this Section 9.1 shall be furnished to Lender within the following time periods:

(i) with respect to information requested in connection with the preparation of Disclosure Documents for a Securitization, within ten (10) Business Days after notice from Lender; and

(ii) with respect to ongoing information required under Sections 9.1(d) and (e) above, (A) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (B) not later than seventy-five (75) days after the end of each Fiscal Year of Borrower.

(g) All financial data and financial statements provided by Borrower hereunder pursuant to Sections 9.1(c), (d), (e) and (f) hereof shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB, and any and all other applicable Legal Requirements. All financial statements relating to a Fiscal Year shall be audited by independent accountants of Borrower acceptable to Lender in accordance with generally accepted auditing standards, Regulation S-X or Regulation S-K, as applicable, Regulation AB, and all other applicable Legal Requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB, and all other applicable Legal Requirements, and shall be further accompanied by a manually executed consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document, any Exchange Act Filing or any report that is required to be made “available” to holders of the Securities under Regulation AB or applicable Legal Requirements and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document, any Exchange Act Filing or any report that is required to be made “available” to holders of the Securities under Regulation AB or applicable Legal Requirements, all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial data and financial statements (audited or unaudited) provided by Borrower shall be accompanied by an Officer’s Certificate which shall state that such financial data and financial statements meet the requirements set forth in the first sentence of this paragraph.

(h) In the event Lender determines, in connection with a Securitization, that financial statements and financial data required in order to comply with Regulation AB or any amendment, modification or replacement thereto or any other Legal Requirements are other than as provided herein, then notwithstanding the foregoing provisions of this Section 9.1, Lender may request, and Borrower shall promptly provide, such other financial statements and financial data as Lender determines to be necessary or appropriate for such compliance.

(i) Without limiting the generality of Section 9.1(h) above, if requested by Lender, Borrower shall promptly provide Lender with any financial statements or financial, statistical, operating or other information as Lender shall determine to be required pursuant to Regulation AB or any amendment, modification or replacement thereto or any other Legal Requirements in connection with any Disclosure Document, any Exchange Act Filing or any report that is required to be made “available” to holders of the Securities under Regulation AB or applicable Legal Requirements or as shall otherwise be reasonably requested by Lender.

(j) Borrower agrees that Lender may disclose any information relating to Borrower, its Affiliates, the Property or any aspect of the Loan (including information provided by or on behalf of Borrower or any of its Affiliates to Lender) to the parties requesting such information and, if applicable, the NRSROs in connection with any Secondary Market Transaction. Borrower also understands that the findings and conclusions of any third-party due diligence report obtained by Lender or other Securitization Indemnified Parties may be made publicly available if required, and in the manner prescribed, by Section 15E(s)(4)(A) of the Exchange Act, any rules promulgated thereunder or any other applicable Legal Requirements.

(k) All costs and expenses incurred by Borrower, Guarantor and Lender in connection with this Section 9.1 (including, without limitation, the fees and expenses of the Rating Agencies) shall be paid by Borrower.

Section 9.2. Securitization Indemnification.

(a) Borrower understands that information provided to Lender by Borrower or its agents, counsel and representatives may be included in Disclosure Documents in connection with a Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the “Securities Act”), or the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), and may be made available to investors or prospective investors in the Securities, the NRSROs and other advisory and service providers relating to a Securitization. In the event that any Disclosure Document is required to be revised prior to the sale of all Securities in connection with a Securitization, Borrower will cooperate with Lender (or, if applicable, the holder of the applicable interest in the Loan) in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) Borrower hereby agrees to indemnify Lender, UBSRESI, any Affiliate of UBSRESI that has filed any registration statement relating to the Securitization or has acted as the issuer, the sponsor or depositor in connection with a Securitization, any Affiliate of UBSRESI that acts as an underwriter, placement agent or initial purchaser of the Securities issued in connection with a Securitization, any other issuers, depositors, underwriters, placement agents or initial purchasers of the Securities issued in connection with a Securitization, and each of their respective directors, officers, partners, employees, representatives, agents and Affiliates, and each Person that controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “Securitization Indemnified Parties”) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses (collectively, the “Securitization Indemnification Liabilities”) to which any Securitization Indemnified Party may become subject insofar as the Securitization Indemnification Liabilities arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the information provided to Lender by Borrower, any Affiliate of Borrower or any of their respective agents, counsel or representatives, (ii) the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, in light of the circumstances under which they were made, not misleading, and (iii) a breach of the representations and warranties made by Borrower in Section 3.1.34 of this Agreement. Borrower also agrees to reimburse each Securitization Indemnified Party for any legal or other costs and expenses reasonably incurred by such Securitization Indemnified Party in connection with investigating or defending the Securitization Indemnification Liabilities. Borrower’s liability under this paragraph will be limited to any such liability, obligation, loss, damage, penalty, action, judgment, suit, claim, cost or expense that arises out of or is based upon an untrue statement or omission made therein in reliance upon and in conformity with information furnished by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or closing of the Loan (including, without limitation, financial statements of Borrower, operating statements and rent rolls with respect to the Property). This indemnity provision will be in addition to any obligation or liability which Borrower may otherwise have.

(c) In connection with Exchange Act Filings and information therein or other reports containing comparable information that are required to be made “available” to holders of the Securities under Regulation AB or applicable Legal Requirements, as it relates to the Property, Borrower, Guarantor, any Affiliate of Borrower or Guarantor, Manager or any other aspect of the Loan, Borrower agrees to (i) indemnify the Securitization Indemnified Parties for Securitization Indemnification Liabilities to which any Securitization Indemnified Party may become subject insofar as the Securitization Indemnification Liabilities arise out of, or are based upon, an untrue statement or omission made in reliance upon, and in conformity with, information furnished to Lender by or on behalf of Borrower in connection with the preparation of the Disclosure Document, in connection with the underwriting or closing of the Loan or any of the reports, statements or other information furnished by or on behalf of Borrower pursuant to the terms of this Agreement, including financial statements of Borrower, operating statements and rent rolls with respect to the Property, and (ii) reimburse each Securitization Indemnified Party for any legal or other costs and expenses reasonably incurred by such Securitization Indemnified Party in connection with defending or investigating the Securitization Indemnification Liabilities.

(d) Promptly after receipt by a Securitization Indemnified Party of notice of any claim or the commencement of any action or suit, such Securitization Indemnified Party shall, if a claim for indemnification in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of such action or suit; provided, however, that the failure to notify Borrower shall not relieve Borrower from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify Borrower shall not relieve Borrower from any liability which it may have to any Securitization Indemnified Party otherwise than under the provisions of this Section 9.2. If any such claim, action or suit shall be brought against any Securitization Indemnified Party, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to such Securitization Indemnified Party. After notice from Borrower to the applicable Securitization Indemnified Party of Borrower’s election to assume the defense of such claim, action or suit, Borrower shall not be liable to such Securitization Indemnified Party for any legal or other costs and expenses subsequently incurred by such Securitization Indemnified Party in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action or suit include both Borrower, on the one hand, and one or more Securitization Indemnified Parties on the other hand, and a Securitization Indemnified Party shall have reasonably concluded that there are legal defenses available to it and/or other Securitization Indemnified Parties that are different or in addition to those available to Borrower, the Securitization Indemnified Party or Parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action or suit on behalf of such Securitization Indemnified Party or Parties. The Securitization Indemnified Party shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Securitization Indemnified Party is seeking or intends to seek reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such

counsel's fees and disbursements are related solely to the defense of a claim for which Borrower is required hereunder to indemnify such Securitization Indemnified Party. Borrower shall not be liable for the costs and expenses of more than one (1) such separate counsel unless a Securitization Indemnified Party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Securitization Indemnified Party.

(e) Without the prior written consent of the applicable Securitization Indemnified Party (which consent shall not be unreasonably withheld or delayed), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Securitization Indemnified Party is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given the applicable Securitization Indemnified Party reasonable prior notice thereof and shall have obtained an unconditional release of each Securitization Indemnified Party from all Securitization Indemnification Liabilities arising out of or relating to such claim, action, suit or proceeding. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Securitization Indemnified Party without the consent of Borrower (which consent shall not be unreasonably withheld or delayed).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Securitization Indemnified Party harmless (with respect only to the Securitization Indemnification Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Securitization Indemnified Party, on the other hand, shall contribute to the Securitization Indemnification Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (i) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Securitization Indemnified Party, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative faults of Borrower, on the one hand, and all Securitization Indemnified Parties, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no Person found liable for a fraudulent misrepresentation shall be entitled to contribution from any other Person who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Securitization Indemnified Parties collectively pursuant to this Section 9.2(f) exceed the amount of the fees actually received by the Securitization Indemnified Parties in connection with the closing of the Loan.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Securitization Indemnified Party is a formal party to any claim, action, suit or proceeding. Borrower further agrees that the Securitization Indemnified Parties are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of Borrower and the Securitization Indemnified Parties under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

X. DEFAULTS

Section 10.1. Event of Default.

(a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) (A) if any monthly Debt Service or any monthly deposit of Reserve Funds is not paid within three (3) days of the date due or the payment due on the Maturity Date is not paid when due or (B) if any other portion of the Debt is not paid when due; provided that, with respect to this clause (B), such non-payment continues for five (5) days following notice to Borrower that the same is due and payable;

(ii) if any of the Taxes or Other Charges are not paid when due;

(iii) if the Policies are not kept in full force and effect;

(iv) if Borrower commits, permits or suffers a Transfer in violation of the provisions of this Agreement or Article 6 of the Security Instrument;

(v) if any certification, representation or warranty made by Borrower herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date such certification, representation or warranty was made;

(vi) (A) if Borrower or Sole Member shall make an assignment for the benefit of creditors or (B), if Guarantor shall make an assignment for the benefit of creditors;

(vii) (A) if Borrower or Sole Member fails or admits its inability to pay debts generally as they become due or (B) if, Guarantor fails or admits its inability to pay debts generally as they become due;

(viii) (A) if a receiver, liquidator or trustee shall be appointed for Borrower or Sole Member or if Borrower or Sole Member shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or Sole Member, or if any proceeding for the dissolution or liquidation of Borrower or Sole Member shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or Sole Member, upon the same not being discharged, stayed or dismissed within ninety (90) days, or (B) if a receiver, liquidator or trustee shall be appointed for Guarantor or if Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal

bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Guarantor, or if any proceeding for the dissolution or liquidation of Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days or if an order for relief is entered

(ix) if Borrower or Guarantor attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(x) if Borrower shall be in default beyond any applicable cure periods under any agreement (other than the Loan Documents) creating a Lien on the Property or any part thereof;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) if Borrower shall continue to be in Default under any of the terms, covenants or provisions set forth in Section 9.1, Section 11.29 or Section 11.30 hereof, or fails to cooperate with Lender in connection with a Secondary Market Transaction in accordance with the terms, covenants and provisions set forth in Section 9.1 hereof, for five (5) days after notice to Borrower from Lender;

(xiii) [Intentionally Omitted];

(xiv) if Borrower breaches any representation, warranty or covenant contained in Section 3.1.24 hereof;

(xv) [Intentionally Omitted];

(xvi) [Intentionally Omitted];

(xvii) (A) if a breach or default by Borrower under any condition or obligation contained in any Operating Agreement is not cured within any applicable cure period provided therein, (B) if there occurs any event or condition that gives any party to any Operating Agreement (other than Borrower) the right to terminate or cancel such Operating Agreement and such event or condition is not cured within any applicable cure period under such Operating Agreement, or (C) if any Operating Agreement is terminated or cancelled without Lender's prior consent, the termination or cancellation of which could result in a Material Adverse Effect as reasonably determined by Lender, or (D) if any of the terms, covenants or conditions of any Operating Agreement shall in any manner be modified, changed, supplemented, altered, or amended without Lender's prior consent, which modification, change, supplementation, alteration or amendment, in each case, could result in a Material Adverse Effect as reasonably determined by Lender;

(xviii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement and such default permits Manager thereunder to terminate or cancel the Management Agreement, and a Qualified Manager operating under Replacement Management Agreement (with a management fee which does not exceed then prevailing market rates) and which has executed an assignment and subordination of management agreement in Lender's then current form, is not put in place within ten (10) Business Days after such termination or cancellation;

(xix) [Intentionally Omitted];

(xx) [Intentionally Omitted];

(xxi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in clauses (i) to (xx) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days; or

(xxii) if there shall be Default under any of the other Loan Documents beyond any applicable cure periods contained in such Loan Documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in Section 10.1(a)(vi), (vii) or (viii) above) and at any time thereafter, Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in Section 10.1(a)(vi), (vii) or (viii) above, the Debt shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 10.2. Remedies.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any portion of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or initiated or taken other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole and absolute discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that, if an Event of Default has occurred and remains outstanding, (i) Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its rights and remedies against the Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Obligations or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any order, proportion or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its sole and absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole and absolute discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Upon the occurrence of an Event of Default (but without limiting Lender’s rights under [Section 9.1](#), [Section 11.29](#) or [Section 11.30](#) hereof), Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (collectively, the “**Severed Loan Documents**”) in such denominations and priority as Lender shall determine in its sole and absolute discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the

severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and other matters and documentation in connection therewith. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) Any amounts recovered from the Property or any other collateral for the Loan after the occurrence of an Event of Default may be applied by Lender toward the payment of any principal and/or interest of the Loan and/or any other amounts due under the Loan Documents in such order, proportion and priority as Lender in its sole and absolute discretion shall determine.

Section 10.3. Right to Cure Defaults.

Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or under the other Loan Documents or being deemed to have cured any Event of Default, make, do or perform any obligation of Borrower hereunder or under the other Loan Documents in such manner and to such extent as Lender may deem necessary. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property for such purposes. All costs and expenses incurred by Lender in remedying or attempting to remedy such Event of Default or such other breach or default by Borrower or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate from the date such costs and expenses were incurred to the date reimbursement payment is received by Lender. All such costs and expenses incurred by Lender, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Obligations, shall be secured by the liens and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

Section 10.4. Remedies Cumulative.

The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole and absolute discretion. No delay or omission to exercise any right, power or remedy accruing upon an Event of Default shall impair any such right, power or remedy or shall be construed as a waiver thereof, but any such right, power or remedy may be exercised from time to time and as often as may be

deemed expedient. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any right, power or remedy consequent thereon.

XI. MISCELLANEOUS

Section 11.1. Successors and Assigns.

This Agreement and all agreements, covenants, representations and warranties in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 11.2. Lender's Discretion.

Whenever pursuant to this Agreement Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Prior to a Securitization, whenever pursuant to this Agreement the Rating Agencies are given any right to approve or disapprove, or any arrangement or term is to be satisfactory to the Rating Agencies, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory, based upon Lender's determination of Rating Agency criteria, shall be substituted therefore.

Section 11.3. Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT

PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

O'HALLORAN RYAN LLP
275 MADISON AVENUE, SUITE 2005
NEW YORK, NEW YORK 10016
ATTN: NEIL J. O'HALLORAN

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE AGENT IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 11.4. Modification, Waiver in Writing.

No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 11.5. Delay Not a Waiver.

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement in, or exercising any right, power, remedy or privilege under, this Agreement or any other Loan Document shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. Lender shall have the right to waive or reduce any time periods that Lender is entitled to under the Loan Documents in its sole and absolute discretion.

Section 11.6. Notices.

All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "**Notice**") required, permitted, or desired to be given hereunder shall be in writing (a) sent by telefax (with answer back acknowledged), (b) sent by registered or certified mail, postage prepaid, return receipt requested, (c) delivered by hand or (d) delivered by 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 in accordance with the provisions of this Section 11.6. Any Notice shall be deemed to have been received: (i) if sent by telefax, on the date of sending the telefax if sent during business hours on a Business Day (otherwise on the next Business Day), (ii) if sent by registered or certified mail, on the date of delivery or the date of the first attempted delivery, in either case on a Business Day (otherwise on the next Business Day), (iii) if delivered by hand, on the date of delivery if delivered during business hours on a Business Day (otherwise on the next Business Day), and (iv) if sent by an overnight commercial courier, on the next Business Day, in each case addressed to the parties as follows:

If to Lender:

UBS Real Estate Securities Inc.
1285 Avenue of the Americas
New York, New York 10019
Attention: Transaction Management
Maryann Fisher
Facsimile No.: (212) 821-2848

with a copy to:

Cassin & Cassin LLP
711 Third Avenue, 20th Floor
New York, New York 10017
Attention: Dennis W. Mensi, Esq.
Facsimile No.: (212) 557-2952

If to Borrower:

Bluebird Metrowest Orlando, LLC
1530 Cornerstone Blvd., Suite 100
Daytona Beach, Florida 32117
Attention: John P. Albright
Facsimile No.: (386) 274-1223

with a copy to:

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
450 South Orange Avenue, Suite 200
Orlando, Florida 32801
Attention: Joaquin E. Martinez
Facsimile No.: (407) 843-4444

Section 11.7. Trial by Jury.

BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, 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 IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

Section 11.8. Headings.

The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 11.9. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 11.10. Preferences.

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Obligations. To the extent Borrower makes any payment to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations or a portion thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 11.11. Waiver of Notice.

Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to the applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 11.12. Remedies of Borrower.

In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender or its agent has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 11.13. Expenses; Indemnity.

(a) Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender, for all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with (i) Borrower's ongoing performance of and compliance with Borrower's agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (ii) Lender's ongoing performance of and compliance with all agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (v) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation or otherwise, in each case against, under or affecting Borrower, this Agreement, any other Loan Document, the Property, or any other security given for the Loan; (vi) enforcing any obligations of, or collecting any payments due from, Borrower or Guarantor under this Agreement or the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; and (vii) securing Borrower's compliance with any requests made by Lender pursuant to the provisions of this Agreement, including Section 9.1, Section 11.29 or Section 11.30 hereof; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. At Lender's discretion, any such costs and expenses due and payable to Lender may be paid to Lender from any amounts in the Clearing Account or the Cash Management Account.

(b) Borrower shall indemnify, defend and hold harmless Lender Indemnitees from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and expenses of counsel for any Lender Indemnitee in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Lender Indemnitee shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Lender Indemnitee in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) any misstatement or omission in any report, certificate, financial statement, other agreement, instrument or document or other materials or information provided by or on behalf of Borrower pursuant to this Agreement or any other Loan Document or in connection with the Loan, or (iii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to the Lender Indemnitees hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of the Lender Indemnitees. To the extent

that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Lender Indemnitees.

(c) Borrower shall pay for or, if Borrower fails to pay, to reimburse Lender for, any fees, costs and expenses of any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees, costs and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 11.14. Schedules Incorporated.

The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 11.15. Offsets, Counterclaims and Defenses.

Any assignee of Lender's interest in and to this Agreement and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 11.16. No Joint Venture or Partnership.

Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender or to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

Section 11.17. Publicity.

Except for disclosures and reporting required by applicable Legal Requirements and communications with shareholders of Guarantor or other constituent entities of Borrower in the ordinary course of business, all news releases, publicity or advertising by Borrower or its Affiliates through any media which refers to the Loan, the Loan Documents or Lender or any of its Affiliates shall be subject to the prior approval of Lender, not to be unreasonably withheld, conditioned or delayed and, upon submission to Lender or Servicer, if not approved within ten (10) Business Days after receipt of such submission, such approval shall be deemed granted. Upon the prior approval of Borrower, not to be unreasonably withheld, conditioned or delayed and, upon submission to Borrower of a request for such approval, if not approved within ten (10) Business Days after receipt of such submission, such approval shall be deemed granted, Lender may issue press releases, advertisements and other promotional materials in connection

with Lender's own promotional and marketing activities, and such materials may describe the Loan in general terms or in detail and Lender's participation therein in the Loan; provided, however, Borrower's prior approval shall not be required for the issuance by Lender of any information regarding the Loan in connection with a Secondary Market Transaction.

Section 11.18. Waiver of Marshalling of Assets.

To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners, members and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 11.19. Waiver of Offsets/Defenses/Counterclaims.

Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

Section 11.20. Conflict; Construction of Documents; Reliance.

In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges and agrees that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any legal, beneficial or economic interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 11.21. Brokers and Financial Advisors.

Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower shall indemnify, defend and hold Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 11.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 11.22. Exculpation.

Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in this Agreement, the Note, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under this Agreement, the Note, the Security Instrument and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents, and in any other collateral given to Lender, and Lender, by accepting this Agreement, the Note, the Security Instrument and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with this Agreement, the Note, the Security Instrument or the other Loan Documents. The provisions of this Section 11.22 shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (c) affect the validity or enforceability of any guaranty or indemnity made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its rights and remedies against the Property, the Rents or any other collateral given to Lender pursuant to the Loan Documents; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with, and Borrower shall be personally liable for, the following (all such liability and obligation of Borrower for any or all of the following being referred to herein as the "**Borrower's Recourse Liabilities**"):

- (i) fraud, intentional or material misrepresentation by Borrower, Guarantor or any Affiliate of Borrower or Guarantor in connection with the Loan;

(ii) the gross negligence or willful misconduct by or on behalf of Borrower, Guarantor or any Affiliate of Borrower or Guarantor or any of their respective agents or representatives in connection with the Loan;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in the Security Instrument concerning Environmental Laws and Hazardous Substances and any indemnification of Lender and other Persons with respect thereto in either document;

(iv) the removal or disposal of any portion of the Property after an Event of Default;

(v) the misappropriation, misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any Casualty, (B) any Awards or other amounts received in connection with a Condemnation of all or a portion of the Property, or (C) any Rents;

(vi) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of the applicable Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(vii) Borrower's failure to obtain and maintain in full force and effect fully paid for Policies as required by this Agreement or to pay any Taxes or assessments affecting the Property;

(viii) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property;

(ix) Borrower's indemnification of Lender set forth in Section 9.2 hereof;

(x) any material physical waste at the Property;

(xi) any damage or destruction to the Property caused by the acts or omissions of Borrower, Guarantor or any of their principals, officers, agents, employees or contractors;

(xii) the payment of fees or other amounts by Borrower to any of its Affiliates in violation of the Loan Documents;

(xiii) Borrower's commission of a criminal act;

(xiv) Borrower fails to permit on-site inspections of the Property, fails to provide financial information, fails to maintain its status as a single purpose entity or fails to appoint a new property manager upon the request of Lender, in each case as required by, and in accordance with the terms and provisions of, this Agreement and the other Loan Documents; or

(xv) the first full monthly payment of principal and interest on the Note is not paid when due.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the other Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b) or 1111(b) or any other provisions of the U.S. Bankruptcy Code or any other Bankruptcy Law to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Obligations in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower in the event that any of the following occurs (each, a “**Springing Recourse Event**”): (1) fails to maintain its status as a single purpose entity and such failure results in the substantive consolidation of Borrower with any other Person; (2) Borrower fails to obtain Lender’s prior consent to any Indebtedness or voluntary Lien encumbering the Property or any part thereof or interest therein except to the extent expressly permitted by this Agreement; (3) Borrower fails to obtain Lender’s prior consent to any Transfer except to the extent expressly permitted by this Agreement or the Security Instrument; (4) Borrower files a voluntary petition under the Bankruptcy Law; (5) an Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower files, or joins in the filing of, an involuntary petition against Borrower under the Bankruptcy Law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (6) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person under the Bankruptcy Law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (7) any Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; or (8) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any action or proceeding, its insolvency or inability to pay its debts as they become due.

As used in this [Section 11.22](#), the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms “controlled” and “controlling” shall have correlative meanings.

Section 11.23. Prior Agreements.

This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Summary of Preliminary Terms dated January 16, 2013 between Sponsor and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

Section 11.24. Servicer.

(a) At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer and trustee, together with its agents, nominees or designees, are collectively referred to herein as “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement and/or other agreement providing for the servicing of one (1) or more mortgage loans (collectively, the “**Servicing Agreement**”) between Lender and Servicer. Borrower shall be responsible for (i) any reasonable set-up fees or any other initial costs and expenses relating to or arising under the Servicing Agreement and (ii) any fees and expenses of Servicer (including, without limitation, attorneys’ fees and disbursements) in connection with any release of the Property, any prepayment, defeasance, assumption, amendment or modification of the Loan, any documents or matters requested by Borrower, special servicing or work-out of the Loan or enforcement of the Loan Documents. Without limiting the generality of the foregoing, Servicer shall be entitled to reimbursement of costs and expenses as and to the same extent (but without duplication) as Lender is entitled thereto under this Agreement and the other Loan Documents.

(b) Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrower and Guarantor pursuant to the provisions of this Agreement and the other Loan Documents.

(c) Provided Borrower shall have been given notice of Servicer’s address by Lender, Borrower shall deliver, or cause to be delivered, to Servicer duplicate originals of all notices and other documents and instruments which Borrower or Guarantor may or shall be required to deliver to Lender pursuant to this Agreement and the other Loan Documents (and no delivery of such notices or other documents and instruments by Borrower or Guarantor shall be of any force or effect unless delivered to Lender and Servicer as provided above).

Section 11.25. Joint and Several Liability.

If Borrower consists of more than one (1) Person, the representations, warranties, covenants, obligations and liabilities of each Person shall be joint and several.

Section 11.26. Creation of Security Interest.

Notwithstanding any other provision set forth in this Agreement, the Note, the Security Instrument or any of the other Loan Documents, Lender may at any time grant a security interest in all or any portion of its rights under this Agreement, the Note, the Security Instrument or any of the other Loan Documents (including, without limitation, the payments owing to it) (a) to any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System or to the central reserve bank or similar authority of any other country to secure any obligation of Lender or its Affiliates to such bank or similar authority or (b) to secure any borrowing by Lender or its Affiliates from any company that purchases or funds financial assets by issuing commercial paper.

Section 11.27. Intentionally Omitted.

Section 11.28. Set-Off.

In addition to any other rights and remedies of Lender provided by the Loan Documents and by law, Lender shall have the right, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by Borrower hereunder or under the other Loan Documents (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate of Lender to or for the credit or the account of Borrower. Lender agrees to promptly notify Borrower after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

Section 11.29. Component Notes.

Without in any way limiting Lender's other rights under this Agreement or any other Loan Document (including Lender's rights under Section 9.1 and Section 11.30 hereof), Lender shall have the right, at any time and in its sole and absolute discretion, to require Borrower to execute and deliver new component notes (including senior and junior notes) to replace the original note or modify the original note to reflect multiple components of the Loan, which notes may be paid in such order of priority as may be designated by Lender, provided that (a) the aggregate principal amount of such component notes shall, on the date created, equal the Outstanding Principal Balance immediately prior to the creation of such component notes, (b) the weighted average interest rate of all such component notes shall, on the date created, equal the interest rate which was applicable to the Loan immediately prior to the creation of such component notes, and (c) the scheduled debt service payments on all such component notes shall, on the date created, equal the scheduled debt service payments under the Loan immediately prior to the creation of such component notes. Borrower, at its cost and expense, shall cooperate with all reasonable requests of Lender in order to establish the component notes and shall execute and deliver, and cause to be executed and delivered, such documents as shall reasonably be required by Lender or any Rating Agency in connection therewith, all in form and substance reasonably satisfactory to Lender and, if applicable, satisfactory to such Rating Agency (including, without limitation, the severance of security documents). Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to establish the component notes as described in this Section 11.29, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Lender shall pay all costs and expenses in connection with the creation of the component notes and all requirements relating thereto.

Section 11.30. Mezzanine Loan.

Without in any way limiting Lender's other rights under this Agreement or any other Loan Document (including Lender's rights under Section 9.1 and Section 11.29 hereof), Lender shall have the right (the "**Mezzanine Option**") at any time, in its sole and absolute discretion, to divide the Loan into two parts: a mortgage loan (the "**Mortgage Loan**") and one or more mezzanine loans (each individually, a "**Mezzanine Loan**"). In effectuating the foregoing, Lender (in its capacity as the lender under the Mezzanine Loans, "**Mezzanine Lender**") will make one or more mezzanine loans to single purpose, bankruptcy remote entities that own, directly or indirectly, all of the legal, beneficial and economic interests in Borrower (each individually, a "**Mezzanine Borrower**") in the amount of the related Mezzanine Loan; each Mezzanine Borrower will contribute the amount of its Mezzanine Loan and the proceeds of any junior Mezzanine Loan contributed to such Mezzanine Borrower by its immediately junior Mezzanine Borrower to Borrower (Borrower, in its capacity as the borrower under the Mortgage Loan, "**Mortgage Borrower**") or to its immediately senior Mezzanine Borrower, as applicable; and Mortgage Borrower will apply the contribution to pay down the Loan to the amount of the Mortgage Loan. In connection with the Mezzanine Option:

(a) Lender shall have the right to establish different interest rates and debt service payments for the Mortgage Loan and the Mezzanine Loans and to require the payment of the Mortgage Loan and the Mezzanine Loans in such order of priority as may be designated by Lender; provided, that (i) the aggregate principal amount of the Mortgage Loan and the Mezzanine Loans shall equal the Outstanding Principal Balance immediately prior to the creation of the Mortgage Loan and the Mezzanine Loans, (ii) the weighted average interest rate of the Mortgage Loan and the Mezzanine Loans shall, on the date created, equal the interest rate which was applicable to the Loan immediately prior to creation of the Mortgage Loan and the Mezzanine Loans and (iii) the scheduled debt service payments on the Mortgage Loan and the Mezzanine Loans shall, on the date created, equal the scheduled debt service payments under the Loan immediately prior to creation of the Mortgage Loan and the Mezzanine Loans.

(b) Each Mezzanine Borrower shall be a single purpose, bankruptcy remote entity under the criteria established by the Rating Agencies and shall own directly one hundred percent (100%) of the legal, beneficial and economic interests in Mortgage Borrower or its immediately senior Mezzanine Borrower, as applicable. The security for any Mezzanine Loan shall include a pledge by the related Mezzanine Borrower of one hundred percent (100%) of the direct ownership interests in Mortgage Borrower or its immediately senior Mezzanine Borrower, as applicable.

(c) Borrower, Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender in order to convert the Loan into the Mortgage Loan and the Mezzanine Loans and shall execute and deliver, and cause to be executed and delivered, such documents as shall reasonably be required by Lender or any Rating Agency in connection therewith, all in form and substance reasonably satisfactory to Lender and, if applicable, satisfactory to such Rating Agency (including, without limitation, the delivery of bankruptcy non-consolidation opinions and the modification of organizational documents and loan documents). Each of Borrower, Mortgage Borrower and Mezzanine Borrowers hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an

interest, in its name and stead to make and execute all documents necessary or desirable to convert the Loan as described in this Section 11.30, each of Borrower, Mortgage Borrower and Mezzanine Borrowers ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Lender shall pay all costs and expenses in connection with the creation of the Mortgage Loan and the Mezzanine Loans and all requirements relating thereto.

Section 11.31. Approvals; Third Parties; Conditions.

(a) All approval rights retained or exercised by Lender with respect to any Leases, contracts, plans, studies and other matters are solely to facilitate Lender's credit underwriting, and shall not be deemed or construed as a determination that Lender has passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person.

(b) This Agreement and the other Loan Documents are for the sole and exclusive use of Borrower and Lender and may not be enforced, nor relied upon, by any other Person. Nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon any Person other than Borrower and Lender any right to insist upon or to enforce the performance or observance of any of the terms, covenants and conditions contained herein or therein. All conditions to the obligations of Lender hereunder or under the other Loan Documents are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make the Loan (or, if applicable, make any advances) or otherwise perform or satisfy such obligations in the absence of strict compliance with any or all of such conditions and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender at any time in Lender's sole and absolute discretion.

Section 11.32. Limitation on Liability of Lender's Officers, Employees, etc.

Any obligation or liability whatsoever of Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Lender's interest in the Property only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, any other asset or property of Lender or the asset or property of any of Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 11.33. Certain Additional Rights of Lender (VCOC).

Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of Hazardous Substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times upon reasonable notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 4.1.6 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property).

The rights described above in this Section 11.33 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender. As used in this Section 11.33, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms "controlled" and "controlling" shall have correlative meanings.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

LENDER:

UBS REAL ESTATE SECURITIES INC., a
Delaware corporation

By: /s/ Siho Ham

Name: Siho Ham

Title: Associate Director

By: /s/ Racquel A. C. Small

Name: Racquel A. C. Small

Title: Director

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

BORROWER:

BLUEBIRD METROWEST ORLANDO LLC, a
Delaware limited liability company

By: **CONSOLIDATED-TOMOKA LAND CO.**, a
Florida corporation,
its managing member

By: /s/ Mark E. Patten

Name: Mark E. Patten

Title: Sr. Vice President and CFO

SCHEDULE I

(RENT ROLL)

Schedule I-1

SCHEDULE II
(REQUIRED REPAIRS)

Property	Required Repair	Deadline	Deposit Amount
Metro West Building 6355 Metro West Blvd., Orlando, FL	Pavement and Parking***	60 days after the Closing Date	\$ 20,533.75

*** As more particularly set forth in that certain Property Condition Report with respect to the Property, prepared by EBI Consulting, Project # 11130461: patching, crack sealing, seal coating and striping of asphalt pavement.

Schedule II-1

SCHEDULE III
(ORGANIZATIONAL CHART)

Schedule III-1

SCHEDULE IV

(DESCRIPTION OF REA)

Master Declaration of Protective Covenants and Restrictions for Metrowest recorded March 13, 1986 in Official Records Book 3759, page 2756, as affected by Agreement Concerning Transfer of Responsibilities recorded in Official Records Book 3820, page 4314, as supplemented by Supplement No. 1 recorded in Official Records Book 3913, page 2944, as supplemented by Supplement No. 2 recorded in Official Records Book 3936, page 4185, as supplemented by Supplement No. 3 recorded in Official Records Book 3968, page 1279, as amended by First Amendment recorded in Official Records Book 5114, page 1077 and Second Amendment recorded in Official Records Book 6189, page 2476, as affected by Assignment and Assumption of Declarant's Rights and Obligations recorded in Official Records Book 6115, page 4273 and as affected by Certificates of Approval recorded in Official Records Book 10299, page 1576 and Official Records Book 10299, page 1581, all in the Public Records of Orange County, Florida.

Declaration of Easements, Covenants, Conditions and Restrictions of Metrocenter, recorded in Official Records Book 10515, page 960, Public Records of Orange County, Florida.

Schedule IV-1

SCHEDULE V
(UPDATED INFORMATION)

1. Any proposed program for the renovation, improvement or development of the Property, or any part thereof, including the estimated cost thereof and the method of financing to be used.
2. The general competitive conditions to which the Property is or may be subject.
3. Management of the Property.
4. Occupancy rate expressed as a percentage for each of the last five (5) years.
5. Principal businesses, occupations and professions carried on, in or from the Property.
6. Number of tenants occupying 10% or more of the total rentable square footage of the Property, the principal business of each such tenant, and the principal provisions of the Leases with such tenants (including, but not limited to: rent per annum, expiration date, and renewal options).
7. The average effective annual rent per square foot or unit for each of the last three (3) years.
8. Schedule of the lease expirations for each of the following ten (10) years stating:
 - (a) The number of tenants whose leases will expire.
 - (b) The total area in square feet covered by such Leases.
 - (c) The annual rent represented by such Leases.
 - (d) The percentage of gross annual rent represented by such Leases.

Schedule V-1



Rent Roll By Company as of 11/02/2012

CAMBRIDGE AT METROCENTER

Building: 23381
 Sqft: 31,895
 Division: ORL

All Billing

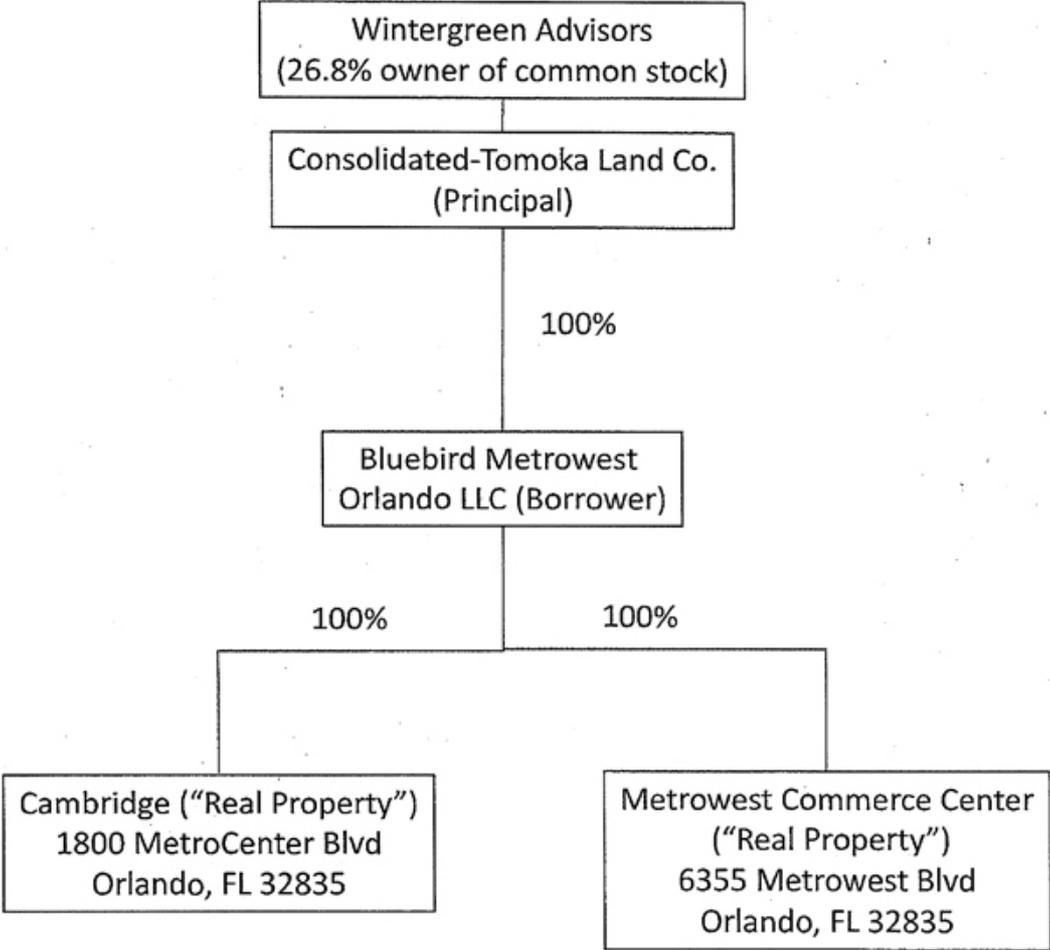
Suit ID	Occupant		Square Feet	Lease Begin	Move in Date	Expire Date	Base Rent	Expense Part	Escalation	Other	Total Monthly	Rate C		
Suite #	Tenant #	Lease #	Sec Dep		AR Bal		PSF	PSF	PSF	PSF	PSF	Code	Beg Date	End Date
TELCOM	tw telecom of florinda, l.p.		0	09/01/2011	09/01/2011	11/30/2021					1,545.00	1,545.00		
TELCOM	265335	89164												
													ANTE	
													9/1/2012	08/31/2013
													9/1/2013	08/31/2014
													9/1/2014	08/31/2015
													9/1/2015	08/31/2016
													9/1/2016	08/31/2017
													9/1/2017	08/31/2018
													9/1/2018	08/31/2019
													9/1/2019	08/31/2020
													9/1/2020	08/31/2021
													9/1/2021	11/30/2021
100	Hilton Resorts Corp.		31,895	08/05/2011	08/05/2011	11/30/2021	43,589.83					43,589.83		
100	220989	87978					46,423.17					16.40		
													BRNT	
													8/5/2011	07/31/2012
													8/1/2012	07/31/2013
													8/1/2013	07/31/2014
													8/1/2014	07/31/2015
													8/1/2015	07/31/2016
													8/1/2016	07/31/2017
													8/1/2017	07/31/2018
													8/1/2018	07/31/2019
													8/1/2019	07/31/2020
													8/1/2020	07/31/2021
													8/1/2021	11/30/2021
													CONC	
													8/5/2011	09/30/2021
TOTALS:	Building Square Feet:		31,895				43,589.83	0.00	0.00	1,545.00	45,134.83			
	Occupied Square Feet:		31,895											
	Vacant Square Feet:		0											
	Occupancy Percent:		100.00%				<i>Missing Square Feet:</i>				<i>0</i>			

Building: 23391
 Sqft: 102,019
 Division: ORL

METROWEST COMMERCE CENTER

All Billing

Suit ID	Occupant	Square Feet	Lease Begin	Move in Date	Expire Date	Base Rent	Expense Part	Escalation	Other	Total Monthly	Rate C	
Suite #	Tenant #	Lease #	Sec Dep	AR Bal	PSF	PSF	PSF	PSF	PSF	Code	Beg Date	End Date
TELCO	tw telecom of florida, l.p.		0	09/01/2011	09/01/2011	11/30/2021			1,545.00	1,545.00		
TELCO	265335	89092										
											ANTE	
												9/1/2012 08/31/2013
												9/1/2013 08/31/2014
												9/1/2014 08/31/2015
												9/1/2015 08/31/2016
												9/1/2016 08/31/2017
												9/1/2017 08/31/2018
												9/1/2018 08/31/2019
												9/1/2019 08/31/2020
												9/1/2020 08/31/2021
												9/1/2021 11/30/2021
100	Hilton Resorts Corporation		97,081	08/01/2011	08/01/2011	11/30/2011	116,092.70			116,092.70		
100	220989	88006				-46,423.17	14.35			14.35		
											BRNT	
												8/1/2011 07/31/2012
												8/1/2012 07/31/2013
												8/1/2013 07/31/2014
												8/1/2014 07/31/2015
												8/1/2015 07/31/2016
												8/1/2016 07/31/2017
												8/1/2017 07/31/2018
												8/1/2018 07/31/2019
												8/1/2019 07/31/2020
												8/1/2020 07/31/2021
												8/1/2021 11/30/2021
125	Vacant		244									
125												
150	Vacant		4,694									
150												
TOTALS:	Building Square Feet:		102,019				116,092.70	0.00	0.00	1,545.00	117,637.70	
	Occupied Square Feet:		97,081									
	Vacant Square Feet:		4,938									
	Occupancy Percent:		95.16%		<i>Missing Square Feet:</i>		<i>0</i>					



LOAN AGREEMENT

Dated as of March 8, 2013

Between

THE ENTITIES SET FORTH ON SCHEDULE I,
collectively, as Borrower

and

BANK OF AMERICA, N.A.,
as Lender

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of March 8, 2013 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**”), between **BANK OF AMERICA, N.A.**, a national banking association, having an address at 214 North Tryon Street, Charlotte, North Carolina 28255 (together with its successors and/or assigns, “**Lender**”) and **THE ENTITES SET FORTH ON SCHEDULE I**, having an address c/o Consolidated-Tomoka Land Co., 1530 Cornerstone Blvd, Suite 100, Daytona Beach Florida 32117 (individually and collectively, together with its successors and/or assigns, “**Borrower**”).

RECITALS:

Borrower desires to obtain the Loan (defined below) from Lender.

Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (defined below).

In consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE 1 DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**Additional Replacement**” shall have the meaning set forth in Section 9.5(g) hereof.

“**Affiliate**” shall mean, as to any Person, any other Person that (i) owns directly or indirectly twenty-five percent (25%) or more of all equity interests in such Person, and/or (ii) is in control of, is controlled by or is under common control with such Person, and/or (iii) is a director or officer of such Person or of an Affiliate of such Person. As used in this definition, the term “control” means the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities or other beneficial interests, by contract or otherwise.

“**Affiliated Manager**” shall have the meaning set forth in Section 7.1 hereof.

“**Allocated Loan Amount**” shall mean, for each Individual Property, the amount set forth on Schedule _____ attached hereto.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Alteration Threshold**” means \$150,000.00.

“**Annual Budget**” shall mean the operating budget, including all planned capital expenditures, if any, for the Property approved by Lender in accordance with Section 5.11(a)(iv) hereof for the applicable calendar year or other period.

“**Assignment of Management Agreement**” shall mean, if required pursuant to Section 5.14 hereof, an Assignment and Subordination of Management Agreement and Consent of Manager to be entered into among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

“**Borrower’s Account**” shall mean account # 4000136481 entitled “Bluebird 14 Holdings LLC Operating Account” maintained by Holdings on Borrower at Wells Fargo Bank, N.A., which account shall be under the exclusive domain and control of Holdings.

“**Borrower Principal**” shall mean Consolidated-Tomoka Land Co., a Florida corporation.

“**Borrower Principal Obligations**” shall have the meaning set forth in Section 18.10(c) hereof.

“**Business Day**” shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which the Note is payable (excluding Saturdays and Sundays).

“**Cash Management Account**” shall have the meaning set forth in Section 10.1(b) hereof.

“**Cash Sweep Period**” shall mean the period commencing on the date upon which the Debt Service Coverage Ratio for the immediately preceding calendar quarter is less than 1.50 to 1.00, and ending on the date the Debt Service Coverage Ratio equals or exceeds 1.55 to 1.00 for the immediately preceding calendar quarter.

“**Casualty**” shall have the meaning set forth in Section 8.2.

“**Certificate of Self-Management**” shall mean that certain Certificate of Self-Management given to Lender by Borrower as of the date hereof.

“**Closing Date**” shall mean the date of the funding of the Loan.

“**Control**” shall have the meaning set forth in Section 7.1 hereof.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result, in lieu or in anticipation, of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“**Creditors Rights Laws**” shall mean with respect to any Person any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, assignment for the benefit of creditors, composition or other relief with respect to its debts or debtors.

“**Debt**” shall mean the outstanding principal amount set forth in, and evidenced by, this Agreement and the Note together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, this Agreement, the Mortgage or any other Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, scheduled interest payments under the Note.

“**Debt Service Coverage Ratio**” shall mean, as of any date of determination, for the applicable period of calculation, the ratio, as determined by Lender, of (i) Net Operating Income to (ii) the aggregate amount of Debt Service which would be due for the same period assuming the maximum principal amount of the Loan is outstanding, unless a Casualty or Condemnation has occurred and the Net Proceeds have been applied to reduce the principal amount of the Loan, and calculated using a payment constant based on the Note Rate.

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall have the meaning set forth in the Note.

“**Defaulting Borrower**” shall have the meaning set forth in Section 20.11(b) hereof.

“**Eligible Account**” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with the corporate trust department of a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a federally chartered depository institution or trust company acting in its fiduciary capacity is subject to the regulations regarding adversary funds on deposit therein under 12 C.F.R. §9.10(b), and in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital surplus of at least \$50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account shall not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P, “P-1” by Moody’s and “F-1+” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least “AA-” by Fitch and S&P and “Aa2” by Moody’s), or such other depository institution or trust company approved by the Rating Agencies from time to time. Notwithstanding the foregoing, prior to a Securitization, Bank of America, N.A. shall be an Eligible Institution.

“**Embargoed Person**” shall mean any person identified by OFAC or any other Person with whom a Person resident in the United States of America may not conduct business or transactions by prohibition of federal law or Executive Order of the President of the United States of America.

“**Environmental Indemnity**” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Borrower Principal in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Environmental Law**” shall have the meaning set forth in Section 12.5 hereof.

“**Environmental Liens**” shall have the meaning set forth in Section 12.5 hereof.

“**Environmental Report**” shall have the meaning set forth in Section 12.5 hereof.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statutes thereto and applicable regulations issued pursuant thereto in temporary or final form.

“**Event of Default**” shall have the meaning set forth in Section 11.1 hereof.

“**Excess Cash**” shall have the meaning set forth in Section 10.2(c) hereof.

“**Excess Cash Reserve Account**” shall have the meaning set forth in Section 9.7 hereof.

“**Excess Cash Reserve Funds**” shall have the meaning set forth in Section 9.7 hereof.

“**Exchange Act**” shall mean the Securities and Exchange Act of 1934, as amended.

“**Exchange Act Filing**” shall mean filings made pursuant to the Exchange Act.

“**Existing Leases**” shall mean those Leases set forth on Schedule I hereto.

“**Extraordinary Expense**” shall mean an operating expense or capital expenditure with respect to the Property that (i) is not set forth on the Annual Budget approved by Lender, (ii) is not an Operating Expense that has been approved by Lender, and (iii) is not subject to payment by withdrawals from the Replacement Reserve Account, if applicable. Borrower shall deliver promptly to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for the approval of Lender not to be unreasonably withheld, conditioned or delayed.

“**Fitch**” shall mean Fitch, Inc.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“**Governmental Authority**” shall mean any court, board, agency, department, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, municipal, city, town, special district or otherwise) whether now or hereafter in existence.

“**Guaranty**” shall mean that certain Guaranty, dated as of the date hereof, executed by Borrower Principal in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Hazardous Materials**” shall have the meaning set forth in Section 12.5 hereof.

“**Holdings**” shall mean Bluebird 14 Holdings LLC, a Delaware limited liability company.

“**Improvements**” shall have the meaning set forth in the granting clause of the Mortgage.

“**Indemnified Parties**” shall mean (a) Lender, (b) any prior owner or holder of the Loan or Participations in the Loan, (c) any servicer or prior servicer of the Loan, (d) any Investor or any prior Investor in any Securities, (e) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (f) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (g) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (h) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties’ assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Mortgage.

“**Independent Director**” of any corporation or limited liability company means an individual with at least three (3) years of employment experience who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors, another nationally-recognized company reasonably approved by Lender, in each case that is not an Affiliate of Borrower and that provides professional Independent Directors and other corporate services in the ordinary course of its business, and which individual is duly appointed as a member of the board of directors or board of managers of such corporation or limited liability company and is not, and has never been, and will not while serving as Independent Director be, any of the following:

(i) a member, partner, equityholder, manager, director, officer, SPE Component Entity or employee of Borrower or any of its equityholders or Affiliates (other than as an Independent Director of an Affiliate of Borrower or SPE Component Entity that is not in the direct chain of ownership of Borrower and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Director is employed by a company that routinely provides professional Independent Directors or managers);

(ii) a creditor, supplier or service provider (including provider of professional services) to Borrower, SPE Component Entity, or any of its equityholders or Affiliates (other than a nationally-recognized company that routinely provides professional Independent Directors and other corporate services to Borrower, SPE Component Entity, or any of their equityholders or Affiliates in the ordinary course of business);

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that controls (whether directly, indirectly or otherwise) any of (i), (ii) or (iii) above.

A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the Independent Director of a “special purpose entity” affiliated with Borrower shall not be disqualified from serving as an Independent Director, provided that the fees that such individual earns from serving as Independent Directors of such Affiliates in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year.

“**Insurance Premiums**” shall have the meaning set forth in Section 8.1(b) hereof.

“**Insurance Proceeds**” shall have the meaning set forth in Section 8.4(b) hereof.

“**Internal Revenue Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Investor**” shall have the meaning set forth in Section 13.3 hereof.

“**Lease**” shall have the meaning set forth in the Mortgage.

“**Legal Requirements**” shall mean all statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration, ownership or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses, authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“**Lien**” shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**LLC Agreement**” shall have the meaning set forth in Section 6.1(c).

“**Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Mortgage, the Environmental Indemnity, the Certificate of Self-Management, the Guaranty, the Lockbox Agreement, and any and all other documents, agreements and certificates executed and/or delivered in connection with the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Lockbox**” shall mean the post office address established pursuant to the Lockbox Agreement and maintained by Lockbox Bank on behalf of Borrower and Lender pursuant to the terms thereof and to which Borrower shall direct all Rents and other income from the Property be sent pursuant to the Tenant Direction Letters.

“**Lockbox Account**” shall have the meaning set forth in Section 10.1(a) hereof.

“**Lockbox Agreement**” shall mean those certain Deposit Account Control Agreements by and among Borrower, Lender, Holdings and Lockbox Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to the operation and maintenance of, and application of funds in, the Lockbox Account.

“**Lockbox Bank**” shall mean Wells Fargo Bank, National Association or any successor Eligible Institution approved or appointed by Lender acting as Lockbox Bank under the Lockbox Agreement.

“**Losses**” shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense).

“**LTV Ratio**” shall have the meaning set forth in Section 8.4(c) hereof.

“**Major Lease**” shall mean as to the Property (i) any Lease which, individually or when aggregated with all other leases at the Property with the same Tenant or its Affiliate, either (A) accounts for five percent (5%) or more of the Property’s rental income, or (B) demises 5,000 square feet or more of the Property’s gross leasable area, (ii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property, or (iii) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i) or (ii) above.

“**Management Agreement**” shall mean any management agreement entered into by and between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms of this Agreement.

“**Manager**” shall mean any property manager, or such other entity selected as the manager of the Property in accordance with the terms of this Agreement.

“**Material Action**” shall mean, as to any Person, to file or consent to the filing of, institute, commence or seek relief under, any petition, proceeding, action or case under any Creditors Rights Laws, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to admit in writing such Person’s inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

“**Material Lease Event**” shall have the meaning set forth in Section 5.13(d) hereof.

“**Maturity Date**” shall have the meaning set forth in the Note.

“**Member**” shall have the meaning set forth in Section 6.1(c).

“**Mold**” shall have the meaning set forth in Section 12.5 hereof.

“**Monthly Payment Amount**” shall have the meaning set forth in the Note.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Mortgage**” shall mean that certain first priority mortgage/deed of trust/deed to secure debt and security agreement dated the date hereof, executed and delivered by Borrower as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Net Operating Income**” shall mean, with respect to any period of time, the amount obtained by subtracting Operating Expenses (based on annualized amounts for any recurring expenses not paid monthly) from Operating Income, as such amount may be adjusted by Lender in its good faith discretion based on Lender’s underwriting standards, including without limitation, adjustments for any Tenants who have (a) filed for bankruptcy protection unless such Tenants have assumed the applicable Leases, (b) are in material monetary default under the terms of their Lease (c) within three (3) years of the earlier of (x) Lease maturity or (y) Maturity Date, given written notice of their intent to vacate at the end of their respective Lease or (d) within three (3) years of the earlier of (x) Lease maturity or (y) Maturity Date, no longer in physical occupancy of their respective leased premises.

“**Net Proceeds**” shall have the meaning set forth in Section 8.4(b) hereof.

“**Net Proceeds Deficiency**” shall have the meaning set forth in Section 8.4(b)(vi) hereof.

“**Note**” shall mean that certain promissory note of even date herewith in the principal amount of \$23,100,000, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, severed, supplemented or otherwise modified from time to time.

“**Note Rate**” shall have the meaning set forth in the Note.

“**OFAC**” shall have the meaning set forth in Section 4.38 hereof.

“**Operating Expenses**” shall mean, with respect to any period of time, the total of all expenses actually paid or payable, computed in accordance with GAAP (or such other method of accounting acceptable to Lender), of whatever kind relating to the operation, maintenance and management of the Property, including without limitation, utilities, ordinary repairs and maintenance, Insurance Premiums, license fees, Taxes and Other Charges, advertising expenses, payroll and related taxes, computer processing charges, management fees equal to the greater of 2% of the Operating Income and the management fees actually paid under the Management Agreement, operational equipment or other lease payments as approved by Lender, normalized capital expenditures equal to \$16,832 per annum, and normalized tenant improvement costs and/or leasing commissions equal to \$11,566 per annum, *but specifically excluding* depreciation and amortization, income taxes, Debt Service, any incentive fees due under the Management Agreement, any item of expense that in accordance with GAAP should be capitalized but only to the extent the same would qualify for funding from the Reserve Accounts, any item of expense that would otherwise be covered by the provisions hereof but which is paid by any Tenant under such Tenant’s Lease or other agreement, and deposits into the Reserve Accounts.

“**Operating Income**” shall mean, with respect to any period of time, all income, computed in accordance with GAAP (or such other method of accounting reasonably acceptable to Lender), derived from the ownership and operation of the Property from whatever source, including, but not limited to, Rents, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, and other required pass-throughs but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, tax rebates, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, interest income from any source other than the escrow accounts, Reserve Accounts or other accounts required pursuant to the Loan Documents, Insurance Proceeds (other than business interruption or other loss of income insurance), Awards, percentage rent, unforfeited security deposits, utility and other similar deposits, income from tenants not paying rent, income from tenants in bankruptcy under Leases not assumed in the bankruptcy proceeding, non-recurring or extraordinary income, including, without limitation lease termination payments, and any disbursements to Borrower from the Reserve Accounts.

“**Other Charges**” shall mean all ground rents, maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof, in each case creating a Lien.

“**Overpaying Borrower**” shall have the meaning set forth in Section 20.11(a) hereof.

“**Participations**” shall have the meaning set forth in Section 13.1 hereof.

“**Patriot Act**” shall have the meaning set forth in Section 4.38 hereof.

“**Permitted Encumbrances**” shall mean collectively, (a) the Lien and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the

Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's sole discretion, including the existing title policies and surveys.

"Permitted Investments" shall mean to the extent available from Lender or Lender's servicer for deposits in the Reserve Accounts and the Cash Management Account, any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by a servicer of the Loan, the trustee under any securitization or any of their respective Affiliates, payable on demand or having a maturity date not later than the Business Day immediately prior to the date on which the funds used to acquire such investment are required to be used under this Agreement and meeting one of the appropriate standards set forth below:

(a) obligations of, or obligations fully guaranteed as to payment of principal and interest by, the United States or any agency or instrumentality thereof provided such obligations are backed by the full faith and credit of the United States of America including, without limitation, obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificates of beneficial ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds); provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) be rated "AAA" or the equivalent by each of the Rating Agencies, (iii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iv) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (v) such investments must not be subject to liquidation prior to their maturity;

(b) Federal Housing Administration debentures;

(c) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated systemwide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations); *provided, however*, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(d) federal funds, unsecured certificates of deposit, time deposits, bankers' acceptances and repurchase agreements with maturities of not more than 365 days of any bank,

the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); *provided, however*, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an “**r**” highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(e) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers’ acceptances with maturities of not more than 365 days and issued by, any bank or trust company, savings and loan association or savings bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities); *provided, however*, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an “**r**” highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(f) debt obligations with maturities of not more than 365 days and at all times rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest long-term unsecured rating category; *provided, however*, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an “**r**” highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(g) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) with maturities of not more than 365 days and that at all times is rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) in its highest short-term unsecured debt rating; *provided, however*, that the investments described in

this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by S&P, must not have an “r” highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments must not be subject to liquidation prior to their maturity;

(h) units of taxable money market funds with maturities of not more than 365 days, which funds are regulated investment companies, seek to maintain a constant net asset value per share and invest solely in obligations backed by the full faith and credit of the United States, which funds have the highest rating available from each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency and otherwise acceptable to each other Rating Agency, as confirmed in writing that such investment would not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities) for money market funds; and

(i) any other security, obligation or investment which has been approved as a Permitted Investment in writing by (i) Lender and (ii) each Rating Agency, as evidenced by a written confirmation that the designation of such security, obligation or investment as a Permitted Investment will not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned to the Securities by such Rating Agency;

provided, however, that no obligation or security shall be a Permitted Investment if (A) such obligation or security evidences a right to receive only interest payments, (B) the right to receive principal and interest payments on such obligation or security are derived from an underlying investment that provides a yield to maturity in excess of one hundred twenty percent (120%) of the yield to maturity at par of such underlying investment or (C) such obligation or security has a remaining term to maturity in excess of one (1) year.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, 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.

“**Personal Property**” shall have the meaning set forth in the granting clause of the Mortgage.

“**Policies**” shall have the meaning specified in Section 8.1(b) hereof.

“**Prohibited Transfer**” shall have the meaning set forth in Section 7.2 hereof.

“**Property**” shall mean collectively, the parcels of real property, the Improvements thereon and all Personal Property owned by Borrower and encumbered by the Mortgage, including any Substitute Property, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of the Mortgage and referred to therein as the “Property”.

“Property Condition Report” shall mean a report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion.

“Rating Agencies” shall mean each of S&P, Moody’s, Fitch, Realpoint LLC and DBRS, Inc., or any other nationally-recognized statistical rating agency which has been approved by Lender.

“REA” shall mean any construction, operation and reciprocal easement agreement or similar agreement (including any separate agreement or other agreement between Borrower and one or more other parties to an REA with respect to such REA) affecting the Property or portion thereof.

“Release” shall have the meaning set forth in Section 12.5 hereof.

“Rent Roll” shall have the meaning set forth in Section 4.25 hereof.

“Rents” shall have the meaning set forth in the Mortgage.

“Replacement Reserve Account” shall have the meaning set forth in Section 9.2(b) hereof.

“Replacement Reserve Funds” shall have the meaning set forth in Section 9.2(b) hereof.

“Replacement Reserve Monthly Deposit” shall have the meaning set forth in Section 9.2(b) hereof.

“Replacements” shall have the meaning set forth in Section 9.2(a) hereof.

“Reporting Default Notice” shall have the meaning set forth in Section 5.11 (e) hereof.

“Required Repairs” shall have the meaning set forth in Section 9.1 hereof.

“Required Work” shall have the meaning set forth in Section 9.4 hereof.

“Reserve Accounts” shall mean to the, extent applicable, the Tax and Insurance Reserve Account, the Replacement Reserve Account, the Excess Cash Reserve Account or any other escrow account established by the Loan Documents.

“Reserve Funds” shall mean, to the extent applicable, the Tax and Insurance Reserve Funds, the Replacement Reserve Funds, the Excess Cash Reserve Funds, or any other escrow funds established by the Loan Documents.

“Restoration” shall mean, following the occurrence of a Casualty or a Condemnation which is of a type necessitating the repair of the Property, the completion of the repair and restoration of the Property to a condition such that the Property shall be at least equal in value to that immediately prior to such Casualty or Condemnation, and as near as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“**Restoration Consultant**” shall have the meaning set forth in Section 8.4(b)(iii) hereof.

“**Restoration Retainage**” shall have the meaning set forth in Section 8.4(b)(iv) hereof.

“**Restricted Party**” shall have the meaning set forth in Section 7.1 hereof.

“**Sale or Pledge**” shall have the meaning set forth in Section 7.1 hereof.

“**Scheduled Payment Date**” shall have the meaning set forth in the Note.

“**Securities**” shall have the meaning set forth in Section 13.1 hereof.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Securitization**” shall have the meaning set forth in Section 13.1 hereof.

“**Separate Properties**” shall mean, individually, each of the Properties identified on Schedule I as the context may require, each a “Separate Property”.

“**Special Member**” shall have the meaning set forth in Section 6.1(c).

“**SPE Component Entity**” shall have the meaning set forth in Section 6.1(b) hereof.

“**S&P**” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“**State**” shall mean the state in which the Property or any part thereof is located.

“**Substitute Property**” shall have the meaning set forth in Section 7.6.

“**Substituted Property**” shall have the meaning set forth in Section 7.6.

“**Substitution**” shall have the meaning set forth in Section 7.6.

“**Tax and Insurance Reserve Funds**” shall have the meaning set forth in Section 9.6 hereof.

“**Tax and Insurance Reserve Account**” shall have the meaning set forth in Section 9.6 hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

“**Tenant**” shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement with Borrower.

“**Tenant Direction Letter**” shall have the meaning set forth in Section 10.2(a)(i) hereof.

“**Termination Fee Deposit**” shall have the meaning set forth in Section 9.3(b).

“**Title Insurance Policy**” shall mean that certain ALTA (or its equivalent) mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Mortgage.

“**Transferee**” shall have the meaning set forth in Section 7.5 hereof.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State where the applicable Property is located.

Section 1.2. Principles of Construction

All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. 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.

ARTICLE 2 GENERAL TERMS

Section 2.1. The Loan

Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

Section 2.2. Disbursement to Borrower

Borrower may request and receive only one borrowing in respect of the Loan and any amount borrowed and repaid in respect of the Loan may not be reborrowed.

Section 2.3. The Note, Mortgage and Loan Documents

The Loan shall be evidenced by the Note and secured by the Mortgage and the other Loan Documents.

Section 2.4. Loan Payments

The Loan and interest thereon shall be payable pursuant to the terms of the Note.

Section 2.5. Loan Prepayments

The Loan may not be prepaid, in whole or in part, except in strict accordance with the express terms and conditions of the Note.

**ARTICLE 3
CONDITIONS PRECEDENT**

Section 3.1. Conditions Precedent

The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of all of the conditions precedent to closing set forth in this Agreement.

**ARTICLE 4
REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Lender as of the Closing Date that:

Section 4.1. Organization

Borrower and Borrower Principal (when not an individual) (a) has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged, (b) is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations, (c) possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property, and (d) in the case of Borrower, has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms of the Loan Documents, and in the case of Borrower and Borrower Principal, has full power, authority and legal right to keep and observe all of the terms of the Loan Documents to which it is a party. Borrower and each Borrower Principal represent and warrant that the chart attached hereto as Exhibit A sets forth an accurate listing of the direct and indirect owners of the equity interests in Borrower and SPE Component Entity.

Section 4.2. Status of Borrower

Borrower's exact legal name is correctly set forth on Exhibit I, on the Mortgage and on any UCC-1 Financing Statements filed in connection with the Loan. Borrower is a limited liability company. Borrower is incorporated in or organized under the laws of the state of Delaware. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) the address of Borrower set forth on the first page of this Agreement. Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of the Note.

Section 4.3. Validity of Documents

Borrower and Borrower Principal have taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents to which they are parties. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and Borrower Principal and constitute the legal, valid and binding obligations of Borrower and Borrower Principal enforceable against Borrower and Borrower Principal in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 4.4. No Conflicts

The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and each Borrower Principal will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower or any Borrower Principal pursuant to the terms of any agreement or instrument to which Borrower or any Borrower Principal is a party or by which any of Borrower's or Borrower Principal's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any Borrower Principal or any of Borrower's or Borrower Principal's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower or Borrower Principal of this Agreement or any of the other Loan Documents has been obtained and is in full force and effect.

Section 4.5. Litigation

Except as previously disclosed to Lender in any Exchange Act Filing, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency that have been filed or served upon Borrower (or with respect to which Borrower has otherwise received written notice) or, to Borrower's or Borrower Principal's knowledge, threatened against or affecting Borrower, any Borrower Principal, the Property, which actions, suits or proceedings, if determined against Borrower, any Borrower Principal, the Property, would materially adversely affect the condition (financial or otherwise) or business of Borrower or any Borrower Principal or the condition or ownership of the Property.

Section 4.6. Agreements

Borrower is not a party to any agreement or instrument or subject to any restriction which would materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under

any agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, (b) obligations under the Loan Documents and (c) obligations disclosed in the financial statements delivered to Lender prior to the Closing Date.

Section 4.7. Solvency

Borrower and Borrower Principal (to the extent applicable to Borrower Principal) have (a) not entered into the transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for their obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of the assets of Borrower and Borrower Principal (to the extent applicable to Borrower Principal) exceeds and will, immediately following the making of the Loan, exceed the total liabilities of Borrower and Borrower Principal, (to the extent applicable to Borrower Principal) including subordinated, unliquidated, disputed and contingent liabilities. No petition in bankruptcy has been filed against Borrower, Borrower Principal or any SPE Component Entity in the last ten (10) years, and neither Borrower, Borrower Principal, or SPE Component Entity in the last ten (10) years has made an assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws. Neither Borrower nor Borrower Principal, or SPE Component Entity is contemplating either the filing of a petition by it under any Creditors Rights Laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower, Borrower Principal, or SPE Component Entity.

Section 4.8. Full and Accurate Disclosure

No statement of fact made by or on behalf of Borrower or Borrower Principal by any authorized representative in this Agreement or in any of the other Loan Documents or in any other document or certificate delivered by or on behalf of Borrower or Borrower Principal by any authorized representative contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower or Borrower Principal which has not been disclosed to Lender which adversely affects, nor as far as Borrower or Borrower Principal can reasonably foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

Section 4.9. No Plan Assets

Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Internal Revenue Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement.

Section 4.10. Not a Foreign Person

Neither Borrower nor Borrower Principal is a foreign corporation, foreign partnership, foreign trust, foreign estate or nonresident alien or a disregarded entity owned by any of them (as those terms are defined in the Internal Revenue Code of 1986), and if requested by Lender, Borrower or Borrower Principal will so certify (or in the case of a disregarded entity, its owner will certify) to Lender or a person designated by Lender under penalties of perjury to the accuracy of this representation, and will provide in such certification such additional information as Lender may reasonably request.

Section 4.11. Enforceability

The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Borrower Principal, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable, (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and neither Borrower nor Borrower Principal has asserted any right of rescission, set-off, counterclaim or defense with respect thereto. No Default or Event of Default exists under or with respect to any Loan Document.

Section 4.12. Business Purposes

The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 4.13. Compliance

To Borrower's knowledge, the Property, and the use and operation thereof, comply in all material respects with all Legal Requirements, including, without limitation, building and zoning ordinances and codes and the Americans with Disabilities Act. To Borrower's knowledge, Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority and Borrower has received no written notice of any such default or violation. There has not been committed by Borrower or, to Borrower's knowledge, any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

Section 4.14. Financial Information

All financial data, including, without limitation, , without limitation, the balance sheets, statements of cash flow, statements of income and operating expense and rent rolls, that have been delivered to Lender in respect of Borrower, Borrower Principal and/or the Property (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower, Borrower Principal or the Property, as applicable, in all material respects, as of the date of such reports, and (c) to the extent prepared or audited by an independent certified public

accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a material adverse effect on the Property or the current and/or intended operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower or Borrower Principal from that set forth in said financial statements.

Section 4.15. Condemnation

No Condemnation or other proceeding has been commenced or, to Borrower's knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

Section 4.16. Utilities and Public Access; Parking

The Property has adequate rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for the Property for its intended uses. All public utilities necessary to the use and enjoyment of the Property as currently used and enjoyed are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities. To Borrower's knowledge, the Property has, or is served by, parking to the extent required to comply with all Legal Requirements.

Section 4.17. Separate Lots

The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 4.18. Assessments

To Borrower's knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

Section 4.19. Insurance

Borrower has obtained and has delivered to Lender such documentation related to insurance as is available to Borrower from the Tenant pursuant to each applicable Lease. To Borrower's knowledge, no claims have been made under any of the Policies, and to Borrower's knowledge, no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any of the Policies.

Section 4.20. Use of Property

The Property is used exclusively for purposes reflected in the applicable Leases.

Section 4.21. Certificate of Occupancy; Licenses

To Borrower's knowledge all certifications, permits, licenses and approvals, including, without limitation, certificates of completion or occupancy and any applicable liquor license required for the legal use, occupancy and operation of the Property for the purpose intended herein, have been obtained and are valid and in full force and effect. Borrower shall keep and maintain (or cause to be kept and maintained as required by any applicable Lease) all licenses necessary for the operation of the Property for the purpose intended herein. To Borrower's knowledge after do inquiry, the use being made of the Property is in conformity with the final certificate of occupancy (or compliance, if applicable) and any other permits or licenses issued for the Property.

Section 4.22. Flood Zone

Except as set forth in any Property Condition Report or survey with respect to the Property, none of the Improvements on the Property are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, or, if any portion of the Improvements is located within such area, Borrower has or has caused to be obtained the insurance prescribed in Section 8.1(a)(i) or comparable insurance as required to be supplied by a Tenant pursuant to their Lease.

Section 4.23. Physical Condition

Except as set forth in the Property Condition Report, to Borrower's knowledge, the Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects. Except as set forth in the Property Condition Report, to Borrower's knowledge, there exists no structural or other material defects or damages in the Property, as a result of a Casualty or otherwise, and whether latent or otherwise. Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

Section 4.24. Boundaries

Except as disclosed in the surveys prepared as part of the closing of this Loan, (a) none of the Improvements which were included in determining the appraised value of the Property lie outside the boundaries and building restriction lines of the Property to any material extent, and (b) no improvements on adjoining properties encroach upon the Property and no easements or other encumbrances upon the Property encroach upon any of the Improvements so as to materially affect the value or marketability of the Property.

Section 4.25. Leases and Rent Roll

Borrower has delivered to Lender a true, correct and complete rent roll for the Property (a “**Rent Roll**”) which includes all Leases affecting the Property (including schedules for all executed Leases for Tenants not yet in occupancy or under which the rent commencement date has not occurred). Except as set forth in the Rent Roll (as same has been updated by written notice thereof to Lender) and estoppel certificates delivered to Lender on or prior to the Closing Date: (a) each Lease is in full force and effect; (b) the premises demised under the Leases have been completed and the Tenants under the Leases have accepted possession of and are in occupancy of all of their respective demised premises; (c) the Tenants under the Leases have commenced the payment of rent under the Leases, there are no offsets, claims or defenses to the enforcement thereof, and Borrower has no monetary obligations to any Tenant under any Lease; (d) all Rents due and payable under the Leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (e) the rent payable under each Lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by the Tenant thereunder for an offset or adjustment to the rent; (f) no Tenant has made any written claim of a material default against the landlord under any Lease which remains outstanding nor has Borrower, by e-mail or other written communication, any notice of a material default under any Lease; (g) to Borrower’s knowledge there is no present material default by the Tenant under any Lease; (h) all security deposits under the Leases have been collected by Borrower; (i) Borrower is the sole owner of the entire landlord’s interest in each Lease; (j) each Lease is the valid, binding and enforceable obligation of Borrower and the applicable Tenant thereunder and there are no agreements with the Tenants under the Leases other than as expressly set forth in the Leases; (k) no Person has any possessory interest in, or right to occupy, the Property or any portion thereof except under the terms of a Lease; (l) none of the Tenants have any option or offer to purchase or right of first refusal or right of first offer to purchase the Property or any part thereof; and (m) neither the Leases nor the Rents have been assigned, pledged or hypothecated except to Lender, and no other Person has any interest therein except the Tenants thereunder.

Section 4.26. Filing and Recording Taxes

All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid or will be paid by Borrower, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof) subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 4.27. Management Agreement

Property is self-managed by the Borrower and there is no Management Agreement in place.

Section 4.28. Illegal Activity.

No portion of the Property has been or will be purchased, improved, equipped or fixtured with proceeds of any illegal activity, and no part of the proceeds of the Loan will be used in connection with any illegal activity.

Section 4.29. Construction Expenses

To the extent Borrower is liable under the Existing Leases, all costs and expenses of any and all labor, materials, supplies and equipment used in the construction maintenance or repair of the Improvements have been paid in full. To Borrower's knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents.

Section 4.30. Personal Property

Borrower has paid in full for, and is the owner of, all Personal Property (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except for Permitted Encumbrances and the Lien and security interest created by the Loan Documents.

Section 4.31. Taxes

Borrower and Borrower Principal have filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor Borrower Principal knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 4.32. Title

Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Loan Documents, materially and adversely affects the value of the Property, impairs the use or the operation of the Property or impairs Borrower's ability to pay its obligations in a timely manner. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms hereof, in each case subject only to Permitted Encumbrances. To Borrower's knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

Section 4.33. Federal Reserve Regulations

No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or prohibited by the terms and conditions of this Agreement or the other Loan Documents.

Section 4.34. Investment Company Act

Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 4.35. Reciprocal Easement Agreements

(a) To Borrower's knowledge neither Borrower, nor any other party is currently in default (nor has any notice been given or received with respect to an alleged or current default) under any of the terms and conditions of the REA, and the REA remains unmodified and in full force and effect;

(b) To Borrower's knowledge all easements granted pursuant to the REA which were to have survived the site preparation and completion of construction (to the extent that the same has been completed), remain in full force and effect and have not been released, terminated, extinguished or discharged by agreement or otherwise;

(c) To Borrower's knowledge, all sums due and owing by Borrower to the other parties to the REA (or by the other parties to the REA to the Borrower) pursuant to the terms of the REA, including, without limitation, all sums, charges, fees, assessments, costs, and expenses in connection with any taxes, site preparation and construction, non-shareholder contributions, and common area and other property management activities have been paid, are current, and no lien has attached on the Property (or threat thereof been made) for failure to pay any of the foregoing;

(d) To Borrower's knowledge the terms, conditions, covenants, uses and restrictions contained in the REA do not conflict in any manner with any terms, conditions, covenants, uses and restrictions contained in any Lease or in any agreement between Borrower and occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions; and

(e) To Borrower's knowledge the terms, conditions, covenants, uses and restrictions contained in each Lease do not conflict in any manner with any terms, conditions, covenants, uses and restrictions contained in the REA, any other Lease or in any agreement between

Borrower and occupant of any peripheral parcel, including without limitation, conditions and restrictions with respect to kiosk placement, tenant restrictions (type, location or exclusivity), sale of certain goods or services, and/or other use restrictions.

Section 4.36. No Change in Facts or Circumstances; Disclosure

All information submitted by Borrower or its agents to Lender and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the Property or the business operations or the financial condition of Borrower. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 4.37. Intellectual Property

All trademarks, trade names and service marks necessary to the business of Borrower as presently conducted or as Borrower contemplates conducting its business are in good standing and, to the extent of Borrower's actual knowledge, uncontested. Borrower has not infringed, is not infringing, and has not received notice of infringement with respect to asserted trademarks, trade names and service marks of others. To Borrower's knowledge, there is no infringement by others of trademarks, trade names and service marks of Borrower.

Section 4.38. Compliance with Anti-Terrorism Laws

None of Borrower, Borrower Principal or any Person who Controls Borrower or Borrower Principal currently is identified by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") or otherwise qualifies as an Embargoed Person, and Borrower has implemented procedures to ensure that no Person who now or hereafter owns a direct or indirect equity interest in Borrower or Borrower Principal is an Embargoed Person or is Controlled by an Embargoed Person. None of Borrower or Borrower Principal is in violation of any applicable law relating to anti-money laundering or anti-terrorism, including, without limitation, those related to transacting business with Embargoed Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations (collectively, as the same may be amended from time to time, the "**Patriot Act**"). To Borrower's knowledge, no tenant at the Property is currently identified by OFAC or otherwise qualifies as an Embargoed Person, or is owned or Controlled by an Embargoed Person. Borrower has implemented procedures to ensure that no tenant at the Property is currently identified by OFAC or otherwise qualifies as an Embargoed Person, or is owned or Controlled by an Embargoed Person.

Section 4.39. Patriot Act

Neither Borrower nor Borrower Principal shall (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the list maintained by OFAC and accessible through the OFAC website) that prohibits or limits any lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower and Borrower Principal, or (b) fail to provide documentary and other evidence of Borrower's identity as may be requested by any lender at any time to enable any lender to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, the Patriot Act. In addition, Borrower hereby agrees to provide to Lender any additional information reasonably available to Borrower that Lender deems necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

Section 4.40. Brokers and Financial Advisors

Neither Borrower nor Lender has dealt with any financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement.

Section 4.41. Survival

Borrower agrees that, unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article 4 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any portion of the Debt remains owing to Lender. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

**ARTICLE 5
BORROWER COVENANTS**

From the date hereof and until repayment of the Debt in full and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

Section 5.1. Existence; Compliance with Requirements

Subject to Borrower's rights and responsibilities as landlord under the Leases:

(a) Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. Borrower hereby covenants and agrees not to commit, or knowingly permit or suffer to exist any act or omission affording any Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall at all times maintain, preserve and protect all franchises and trade names (if any) used in connection with the operation of the Property.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Legal Requirements affecting the Property, provided that (i) no Default or Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iii) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (iv) non-compliance with the Legal Requirements shall not impose civil or criminal liability on Borrower or Lender; (v) Borrower shall have furnished the security as may be required in the proceeding or as reasonably requested by Lender to ensure compliance by Borrower with the Legal Requirements; and (vi) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

Section 5.2. Maintenance and Use of Property

Subject to Borrower's rights and responsibilities as landlord under the Leases (including any restrictions or limitations contained therein), Borrower shall cause the Property to be maintained in a good, safe and insurable condition and in compliance with all applicable Legal Requirements, and shall promptly make all repairs to the Property, above grade and below grade, interior and exterior, structural and nonstructural, ordinary and extraordinary, unforeseen and foreseen. All repairs made by Borrower shall be made with first-class materials, in a good and workmanlike manner, shall be equal or better in quality and class to the original work and shall comply with all applicable Legal Requirements and insurance requirements. The Improvements and the Personal Property shall not be removed, demolished or other than in accordance with the provisions of Section 5.21, materially altered (except for normal replacement of the Personal Property) without the prior written consent of Lender. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender. Notwithstanding the foregoing in this Section 5.2, Borrower's rights and obligations are subject to the applicable provisions of the applicable Lease and Tenant's rights thereunder. To the extent the obligations set forth in this Section 5.2 are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section 5.2 so long as Tenant is not in default under the applicable Lease or, if the Tenant is in default under the applicable Lease after any applicable notice and cure period, for the obligations above, Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower's obligations under this Section 5.2 and the Loan Documents.

Section 5.3. Waste

Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause

for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security for the Loan. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

Section 5.4. Taxes and Other Charges

(a) Subject to sub-section (c) below, Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 9.6 hereof. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges at least five (5) days prior to the date the same shall become delinquent (provided, however, that Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes are being paid by Lender pursuant to Section 9.6 hereof or are otherwise the responsibility of Tenants under the applicable Leases). Borrower shall not suffer and shall promptly cause to be paid and discharged (either on its own behalf or any behalf of the Tenant) any Lien or charge whatsoever which may be or become a Lien or charge against the Property within ten (10) Business Days, and shall promptly pay for all utility services provided to the Property, unless such amounts are the responsibility of Tenants under the applicable Leases. If Borrower shall fail to pay any Taxes or Other Charges in accordance with this Section 5.4 and is not contesting or causing a contesting of such Taxes or Other Charges in accordance with Section 5.4(b) below, or if there are insufficient funds in the Tax and Insurance Reserve Account to pay any Taxes or Other Charges, Lender shall have the right, but shall not be obligated, to pay such Taxes or Other Charges, and Borrower shall repay to Lender, on demand, any amount paid by Lender, with interest thereon at the Default Rate from the date of the advance thereof to the date of repayment, and such amount shall constitute a portion of the Debt secured by the Mortgage.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable Legal Requirements; (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property (unless Borrower first pays the Imposition or charge); (vi) Borrower shall furnish such security as may be required in the proceeding, or deliver to Lender such reserve deposits as may be reasonably requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon (unless Borrower has paid all of the Taxes or Other Charges under protest); (vii) failure to pay such Taxes or Other Charges will not subject Lender to any civil or criminal

liability; (viii) such contest shall not affect the ownership, use or occupancy of the Property; and (ix) Borrower shall, upon request by Lender, give Lender prompt notice of the status of such proceedings and/or confirmation of the continuing satisfaction of the conditions set forth in clauses (i) –(viii) of this Section 5.4(b). Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the reasonable judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

(c) Notwithstanding the foregoing in this Section 5.4, Borrower's rights and obligations are subject to the applicable provisions of the applicable Lease and Tenant's rights thereunder. To the extent the obligations set forth in this Section 5.4 are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section 5.4 so long as Tenant is not in default under the applicable Lease or, if the Tenant is in default under the applicable Lease after any applicable notice and cure period, for the obligations above, Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower's obligations under this Section 5.4 and the Loan Documents.

Section 5.5. Litigation

Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against any of Borrower or the Property which might materially adversely affect either Borrower's condition (financial or otherwise) or business or the Property.

Section 5.6. Access to Property

Subject to the rights of Tenants under Leases, Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 5.7. Notice of Default

Borrower shall promptly advise Lender of any material adverse change in the condition (financial or otherwise) of Borrower, any Borrower Principal or the Property or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

Section 5.8. Cooperate in Legal Proceedings

Borrower shall at Borrower's expense cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may adversely affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

Section 5.9. Performance by Borrower

Subject to the rights of the respective parties to the applicable Lease, Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision to be observed and performed by Borrower under this Agreement and the other Loan Documents and any other agreement or instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 5.10. Awards; Insurance Proceeds

Subject to the rights of the respective parties to the applicable Lease, Borrower shall cooperate with Lender in obtaining for Lender and Borrower the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any reasonable and customary expenses incurred in connection therewith (including reasonable, actual attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of a Casualty or Condemnation affecting the Property or any part thereof) out of such Awards or Insurance Proceeds.

Section 5.11. Financial Reporting

(a) Borrower and Borrower Principal shall keep adequate books and records of account in accordance with GAAP (or such other method of accounting acceptable to Lender), consistently applied and Borrower shall furnish to Lender:

(i) quarterly (and prior to a Securitization, if requested by Lender, monthly) rent rolls, prepared and certified by Borrower in the form reasonably required by Lender, detailing the names of all Tenants of the Improvements, the portion of Improvements (in terms of square footage) occupied by each Tenant, the base rent, additional rent and any other charges payable under each Lease (including annual store sales required to be reported by Tenant under any Lease), and the term of each Lease, including the commencement and expiration dates and any tenant extension, expansion or renewal options, the extent to which any Tenant is in default under any Lease, and any other information as is reasonably required by Lender, within forty-five (45) days after the end of each calendar quarter;

(ii) quarterly (and prior to a Securitization, if requested by Lender, monthly), including year-to-date, and annual operating statements of the Property, prepared and certified by Borrower in the form reasonably required by Lender, detailing the revenues received, the expenses incurred, the net operating income before and after debt service (principal and interest) and capital expenditures and containing such other information as is necessary and sufficient to fairly represent the financial position and results of operation of the Property, as well as a comparison of budgeted revenues and expenses to actual revenues and expenses (together with a detailed explanation of any variance of ten percent (10%) or more), within forty-five (45) days after the end of each calendar quarter;

(iii) subject to Section 5.11(g) herein, annual balance sheets, profit and loss statements, statements of cash flows, and statements of change in financial position of Borrower and Borrower Principal in the form reasonably required by Lender, prepared

and certified by Borrower and Borrower Principal (or if required by Lender, after an Event of Default, annual audited financial statements of the Borrower Principal prepared by an independent certified public accountant), within one hundred twenty (120) days after the close of each fiscal year of Borrower and Borrower Principal, as the case may be;

(iv) an Annual Budget not later than thirty (30) days prior to the commencement of each fiscal year of Borrower in form reasonably satisfactory to Lender. In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower in writing of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed written description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget in full, which approval shall not be unreasonably withheld, conditioned or delayed, the most recent Annual Budget shall apply; provided that, such approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums, utilities expenses and expenses under the Management Agreement (if any); and

(v) a quarterly calculation of the Debt Service Coverage Ratio for the immediately preceding two (2) calendar quarters as of the last day of such period, prepared and certified by Borrower in the form reasonably required by Lender, within thirty (30) days of the end of the quarter.

(b) Upon request from Lender, Borrower shall promptly furnish to Lender:

(i) an accounting of all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the Person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions; and

(ii) a report of all letters of credit provided by any Tenant in connection with any Lease of any part of the Property, including the account numbers of such letters of credit, the names and addresses of the financial institutions that issued such letters of credit and the names of the Persons to contact at such financial institutions, along with any authority or release necessary for Lender to obtain information regarding such letters of credit directly from such financial institutions.

(c) Borrower shall furnish Lender with such other additional financial or management information (including state and federal tax returns) as may, from time to time, be reasonably required by Lender in form and substance reasonably satisfactory to Lender (including, without limitation, any financial reports required to be delivered by any Tenant or any guarantor of any

Lease pursuant to the terms of such Lease or otherwise in Borrower's possession), and shall furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records at Borrower's principal place of business.

(d) All items requiring the certification of Borrower shall, except where Borrower is an individual, require a certificate executed by an authorized officer of Borrower or the general partner or managing member of Borrower, as applicable, and shall contain a statement by Borrower as to whether there exists, to Borrower's knowledge, an Event of Default under the Loan Documents, and if an Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(e) Without limiting any other rights available to Lender under this Loan Agreement or any of the other Loan Documents, in the event Borrower shall fail to timely furnish Lender any financial document or statement in accordance with this Section 5.11, Lender shall provide Borrower with a written notice detailing such failure (a "**Reporting Default Notice**") and Borrower shall have ten (10) Business Days in which to cure such stated failure. In the event Borrower fails to cure the failure set forth in the Reporting Default Notice during the applicable 10 Business Day period, Borrower shall promptly pay to Lender a non-refundable charge in the amount of \$1,000, which amount shall cover all failures set forth in the applicable Reporting Default Notice. The payment of such amount shall not be construed to relieve Borrower of any Event of Default hereunder arising from such failure.

(f) Borrower's reporting requirements pursuant to this Section 5.11 may be satisfied by providing Lender with the consolidated financial statements prepared in accordance with GAAP (or such other method of accounting acceptable to Lender) of Holdings certified by Borrower and Borrower Principal in the form reasonably required by Lender.

(g) Notwithstanding anything to the contrary contained herein or in the other Loan Documents, except as set forth in Section 5.11(a)(iii), Borrower Principal's reporting requirements hereunder, including any requirements with respect to the form or the preparation and audit thereof, shall be satisfied so long as Borrower Principal remains a publicly listed company and makes required Exchange Act Filings.

Section 5.12. Estoppel Statement

(a) After request by Lender, Borrower shall within fifteen (15) Business Days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the rate of interest on the Note, (iii) the unpaid principal amount of the Note, (iv) the date installments of interest and/or principal were last paid, (v) the Maturity Date, (vi) any offsets or defenses to the payment of the Debt, if any, and (vii) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall use its commercially reasonable efforts (without any obligation to commence any legal proceeding) to deliver to Lender, consistent with the terms of the Leases, promptly upon request, duly executed estoppel certificates from any one or more Tenants as

required by Lender attesting to such facts regarding the related Lease as Lender may require, including, but not limited to attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the Tenant claims no defense or offset against the full and timely performance of its obligations under the Lease.

Section 5.13. Leasing Matters

(a) Borrower may enter into a proposed Lease (including the renewal or extension of an existing Lease (a “**Renewal Lease**”)) without the prior written consent of Lender, provided such proposed Lease or Renewal Lease (i) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Borrower (unless, in the case of a Renewal Lease, the rent payable during such renewal, or a formula or other method to compute such rent, is provided for in the original Lease), (ii) is an arm’s-length transaction with a bona fide, independent third party tenant, (iii) does not have a materially adverse effect on the value of the Property taken as a whole, (iv) is subject and subordinate to the Mortgage and the Tenant thereunder agrees to attorn to Lender, (v) does not contain any option, offer, right of first refusal, right of first offer or other similar right to acquire all or any portion of the Property, unless the Tenant thereunder is a credit tenant, such proposed Lease or Renewal Lease is a triple net lease and such option, offer, right of first refusal, right of first offer or other similar right to acquire all or any portion of the Property is subordinate to Lender’s interest in the Property and at a foreclosure or other similar sale, (vi) has a base term of (A) more than ten (10) years and (B) less than thirty (30) years including options to renew, (vii) has no rent, credits, free rents or concessions granted thereunder other than those which are reasonable and customary and comparable to existing local market terms, (viii) is written on the standard form of lease approved by Lender with such reasonable and customary modifications as would not have a material and adverse affect on the value of the Property, and (ix) is not a Major Lease. All proposed Leases which do not satisfy the requirements set forth in this subsection shall be subject to the prior approval of Lender and its counsel, at Borrower’s expense. Borrower shall promptly deliver to Lender copies of all Leases which are entered into pursuant to this subsection together with Borrower’s certification that it has satisfied all of the conditions of this Section.

(b) Borrower (i) shall observe and perform all the obligations imposed upon the landlord under the Leases and shall not do or permit to be done anything to impair the value of any of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all written notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed; (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the landlord’s interest in any of the Leases or the Rents; and (vi) shall not consent to any assignment of or subletting under any Leases not in accordance with their terms, without the prior written consent of Lender.

(c) Borrower may, without the prior written consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce Rents under, accept a surrender of space under, or shorten the term of, any Lease (including any guaranty, letter of credit or other credit

support with respect thereto) provided that (i) such action (taking into account, in the case of a termination, reduction in rent, surrender of space or shortening of term, the planned alternative use of the affected space) does not have a materially adverse effect on the value of the Property taken as a whole, (ii) such action is in the normal course of business and in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located, and (iii) such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Agreement and any subordination agreement binding upon Lender with respect to such Lease. A termination of a Lease with a tenant who is in default beyond applicable notice and grace periods shall not be considered an action which has a materially adverse effect on the value of the Property taken as a whole. Any amendment, modification, waiver, termination, rent reduction, space surrender or term shortening which does not satisfy the requirements set forth in this subsection shall be subject to the prior written approval of Lender (not to be unreasonably withheld or delayed), at Borrower's expense. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into pursuant to this subsection together with Borrower's certification that it has satisfied all of the conditions of this subsection.

(d) Notwithstanding anything contained herein to the contrary, Borrower shall not, without the prior written consent of Lender, enter into, renew, extend, amend, modify, waive any provisions of, terminate, reduce Rents under, accept a surrender of space under, or shorten the term of any Major Lease in a manner that would have a material adverse effect on the applicable Borrower or the applicable Property (a "Material Lease Event"). For the purposes hereof, any extension shall not be deemed to be a Material Lease Event; provided such extension is in accordance with the terms of the applicable Lease or on terms which are reasonable and customary and comparable to existing local market terms. Borrower shall provide Lender with a copy of the proposed Major Lease, or amendment, or modification thereto (whether it is material or non-material) and with respect to any Material Lease Event shall provide Lender with all information reasonably necessary to evaluate the proposed Material Lease Event and, Lender shall have ten (10) Business Days in which to approve or reject (any such rejection stating with reasonable particularity the reasons for such rejection) such Material Lease Event. In the event that Lender fails to respond to any such request requiring Lender's approval within such ten (10) Business Day period, Borrower shall provide Lender with an additional notice and request for approval. If Lender does not respond to such subsequent notice and request for approval in writing rejecting such request (any such rejection stating with reasonable particularity the reasons for such rejection), within five (5) Business Days of such subsequent request, Lender shall be deemed to have approved such request. Borrower and the applicable Tenant shall be entitled to rely conclusively on such deemed approval. Any request submitted in connection with a Material Lease Event shall contain a legend in capitalized bold letters on the top of the cover page stating: "THIS IS A REQUEST FOR CONSENT TO A [PROPOSED MAJOR LEASE] [AMENDMENT TO A LEASE] [MODIFICATION TO A LEASE]. LENDER'S RESPONSE IS REQUESTED WITHIN TEN (10) BUSINESS DAYS." Any additional notice shall contain a legend in capitalized bold letters on the top of the cover page stating: "THIS IS A REQUEST FOR CONSENT TO A [PROPOSED MAJOR LEASE] [AMENDMENT TO A LEASE] [MODIFICATION TO A LEASE]. LENDER'S RESPONSE IS REQUESTED WITHIN FIVE (5) BUSINESS DAYS. LENDER'S FAILURE TO RESPOND WITHIN SUCH TIME PERIOD SHALL RESULT IN LENDER'S CONSENT BEING DEEMED TO HAVE BEEN GRANTED."

(e) Notwithstanding anything contained herein to the contrary, Borrower shall not, without the prior written consent of Lender, enter into, renew, extend, amend, modify, waive any provisions of, terminate, reduce Rents under, accept a surrender of space under, or shorten the term of any Lease during a Cash Sweep Period.

Section 5.14. Property Management

(a) As of the date hereof, Borrower self-manages the Property. In the event that the Borrower should ever elect to employ a Manager for the management of the Property, subject to Section 5.14 hereof, Borrower shall (i) promptly perform and observe all of the covenants required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of any notice of default or other material notice received by Borrower under the Management Agreement; (iv) promptly give notice to Lender of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Property; and (v) promptly enforce the performance and observance of all of the covenants required to be performed and observed by Manager under the Management Agreement. If at any time Lender consents to the appointment of a new manager, such new manager and Borrower shall, as a condition of Lender's consent and subject to Section 5.14 hereof, execute (i) a management agreement in form and substance acceptable to Lender, and (ii) a subordination of management agreement in a form acceptable to Lender.

(b) In the event that the Borrower should ever elect to employ a Manager for the management of the Property, subject to Section 5.14 hereof, Lender shall have the right to require Borrower to replace the Manager if at any time, (i) Manager shall become insolvent or a debtor in a bankruptcy proceeding; (ii) an Event of Default has occurred and is continuing; (iii) a default has occurred and is continuing under the Management Agreement, or (iv) Manager has engaged in gross negligence, fraud, willful misconduct or misappropriation of funds, Borrower shall, at the request of Lender, terminate the Management Agreement upon thirty (30) days prior notice to Manager and replace Manager with a Manager selected by Borrower and approved by Lender on terms and conditions satisfactory to Lender, it being understood and agreed that the management fee for such replacement manager shall not exceed then prevailing market rates.

(c) In addition to the foregoing, in the event that Lender, in Lender's reasonable discretion, at any time prior to the termination of the Assignment of Management Agreement, determines that the Property is not being managed in accordance with generally accepted management practices for projects similarly situated, Lender may deliver written notice thereof to Borrower and Manager, which notice shall specify with particularity the grounds for Lender's determination. If Lender reasonably determines that the conditions specified in Lender's notice are not remedied to Lender's reasonable satisfaction by Borrower or Manager within thirty (30) days from the date of such notice or that Borrower or Manager have failed to diligently undertake correcting such conditions within such thirty (30) day period, Lender may direct Borrower to terminate the Management Agreement and to replace Manager with a Manager approved by Lender on terms and conditions satisfactory to Lender, it being understood and agreed that the management fee for such replacement manager shall not exceed then prevailing market rates.

(d) In the event that the Borrower should ever elect to employ a Manager for the management of the Property, subject to Section 5.14 hereof, Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed): (i) surrender, terminate or cancel the Management Agreement or otherwise replace Manager or enter into any other management agreement with respect to the Property unless Manager is in default under the Management Agreement (if any); (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. In the event that Borrower replaces Manager at any time during the term of Loan pursuant to this subsection, such Manager shall be approved by Lender on terms and conditions satisfactory to Lender, which approval shall not be unreasonably withheld, conditioned or delayed.

(e) In the event that the Borrower should ever elect to employ an affiliate or third party management company for the management of the Property, Borrower agrees (i) that such management company must be approved by Lender, which approval may be granted or denied in Lender's sole discretion, (ii) the management agreement shall be subject to the prior written approval of the Lender, which approval may be granted or denied in Lender's sole discretion, (iii) that such management company shall not receive a management fee greater than 1% of gross collected rents from the Property, and (iv) to execute (and to cause such management company to execute) an Assignment of Management Agreement.

(f) Upon the occurrence of an Event of Default, Borrower acknowledges that Lender reserves the right to require Borrower to employ a property manager (subject to the qualifications set forth in Section 5.14(e) above) to manage the Property if such management by Borrower, in Lender's sole discretion, is inadequate.

Section 5.15. Liens

Subject to Borrower's right to contest same pursuant to the terms of the Mortgage, Borrower shall not, without the prior written consent of Lender, create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except Permitted Encumbrances.

Section 5.16. Debt Cancellation

Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person if such cancellation or forgiveness has a material adverse effect on Borrower or the current and/or intended operation of the Property, except for adequate consideration or in the ordinary course of Borrower's business (including Borrower's determination that any account receivable is uncollectable).

Section 5.17. Zoning

Borrower shall not (i) initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or (ii) use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, in each case without the prior written consent of Lender (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 5.18. ERISA

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not and does not maintain an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(3) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(C) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

Section 5.19. No Joint Assessment

Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

Section 5.20. Reciprocal Easement Agreements

Subject to any applicable restrictions or requirements in any Existing Lease, Borrower shall not enter into, terminate or modify any REA without Lender’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Borrower shall enforce, comply with, and cause each of the parties to the REA to comply with all of the material economic terms and conditions contained in the REA.

Section 5.21. Alterations

Except for any alterations required to be made by Borrower or permitted to be made by any Tenant pursuant to any Lease, Lender's prior written approval shall be required in connection with any alterations to any Improvements, exclusive of alterations to tenant spaces required under any Lease, (a) that may have a material adverse effect on the Property, (b) that are structural in nature (unless relating solely to non-load bearing interior walls) or have an adverse affect on any utility or HVAC system contained in the Improvements or the exterior of any building constituting a part of any Improvements or (c) that, together with any other alterations undertaken at the same time (including any related alterations, improvements or replacements), are reasonably anticipated to have a cost in excess of the Alteration Threshold. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall (if required by Lender) promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (i) cash, (ii) direct non-callable obligations of the United States of America or other obligations which are "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, to the extent acceptable to the applicable Rating Agencies, (iii) other securities acceptable to Lender and the Rating Agencies, or (iv) a completion bond, provided that such completion bond is acceptable to Lender and the Rating Agencies. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations to the Improvements over the Alteration Threshold.

Section 5.22. Intentionally Omitted

**ARTICLE 6
ENTITY COVENANTS**

Section 6.1. Single Purpose Entity/Separateness

Until the Debt has been paid in full, Borrower represents, warrants and covenants as follows:

(a) Borrower has not and will not:

- (i) engage in any business or activity other than the acquisition, development, ownership, operation, leasing, managing and maintenance of the Property, and activities incidental thereto;
- (ii) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the operation of the Property;
- (iii) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) (i) fail to observe all material organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation (to the extent the Property generates sufficient cash flow to do so), or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of its organizational documents in any material manner;

(v) own any subsidiary, or make any investment in, any Person;

(vi) except as contemplated by the Loan Documents with respect to co-borrowers under the Loan, commingle its assets with the assets of any other Person, or permit any Affiliate or constituent party independent access to its bank accounts;

(vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than ninety (90) days past the date incurred and paid on or prior to such date unless Borrower is disputing such amounts owed in good faith (such amounts not to exceed \$500,000 at any one time in the aggregate), and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to Personal Property on commercially reasonable terms and conditions; provided, however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time two percent (2%) of the outstanding principal amount of the Note with respect to any individual Borrower;

(viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Borrower's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separate identity of Borrower from such Affiliate and that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) Borrower's assets, liabilities and net worth shall also be listed on Borrower's own separate balance sheet;

(ix) except for capital contributions or capital distributions permitted under the terms and conditions of the Borrower's organizational documents and properly reflected on its books and records, enter into any transaction, contract or agreement with any general partner, member, shareholder, principal, guarantor of the obligations of Borrower, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) except as contemplated by the Loan Documents with respect to co-borrowers under the Loan, assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets to secure the obligations of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person (and for purposes of clarity, this shall not include distributions to the direct or indirect members of Borrower);

(xiii) fail to (A) file its own tax returns separate from those of any other Person, except to the extent that Borrower is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable Legal Requirements, and (B) pay any taxes required to be paid under applicable Legal Requirements (to the extent the Property generates sufficient cash flow to do so); provided, however, that the Borrower shall not have any obligation to reimburse its equityholders or their Affiliates for any taxes that such equityholders or their Affiliates may incur as a result of any profits or losses of the Borrower;

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require Borrower’s members, Borrower Principal, partners or shareholders to make additional capital contributions to Borrower;

(xvi) if it is a partnership or limited liability company, without the unanimous written consent of all of its partners or members, as applicable, and the written consent of 100% of the **managers** of Borrower, including, without limitation, each Independent Director, take any Material Action or action that would cause such entity to become insolvent;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses and to use separate stationery, invoices and checks;

(xviii) fail to intend to remain solvent or, except as contemplated by the Loan Documents with respect to co borrowers under the Loan, pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds; provided, however, that the foregoing shall not require Borrower’s members, Borrower Principal, partners or shareholders to make additional capital contributions to Borrower; or

(xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable;

(xx) intentionally omitted;

(xxi) fail to maintain and use separate stationery, invoices and checks bearing its own name to the extent such Borrower is providing written notices, invoices and checks; or

(xxii) have any of its obligations guaranteed by an Affiliate, except as contemplated by the Loan Documents with respect to co-borrowers or Borrower Principal under the Loan.

(b) If Borrower is a partnership or limited liability company, each general partner in the case of a partnership, or the managing member in the case of a limited liability company (each an “**SPE Component Entity**”) of Borrower, as applicable, shall be a corporation or a limited liability company whose sole asset is its interest in Borrower, provided that if such SPE Component Entity is a limited liability company, each of its managing members shall also be a SPE Component Entity. Each SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in Section 6.1(a)(iii) - (vi) and (viii) - (xxi), as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in Borrower; (iii) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (iv) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (v) will cause Borrower to comply with the provisions of this Section 6.1 and Section 6.4. Prior to the withdrawal or the disassociation of any SPE Component Entity from Borrower, Borrower shall immediately appoint a new general partner or managing member whose articles of incorporation or limited liability company agreement, as applicable, are substantially similar to those of such SPE Component Entity. Lender acknowledges that as of the Closing Date, Holdings satisfies the requirement of the SPE Component Entity, and Holdings will at all times comply with the provisions of Sections 6.1(c) and 6.1(d) below.

(c) In the event Borrower and/or SPE Component Entity is a single-member Delaware limited liability company, the limited liability company agreement of Borrower and/or SPE Component Entity (the “**LLC Agreement**”) shall provide that (i) upon the occurrence of any event that causes the sole member of Borrower and/or SPE Component Entity (“**Member**”) to cease to be the member of Borrower and/or SPE Component Entity (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower and/or SPE Component Entity and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower and/or SPE Component Entity, in either case in accordance with the terms of the Loan Documents and the LLC Agreement), any person acting as Independent Director of Borrower and/or SPE Component Entity (“**Special Member**”) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower and/or SPE Component Entity, automatically be admitted to Borrower and/or SPE Component Entity and shall continue Borrower and/or SPE Component Entity without dissolution and (ii) Special Member may not resign from Borrower and/or SPE Component Entity or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower and/or SPE Component Entity as Special Member in accordance with requirements of Delaware law

and (B) such successor Special Member has also accepted its appointment as an Independent Director. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower and/or SPE Component Entity upon the admission to Borrower and/or SPE Component Entity of a substitute Member, (ii) Special Member shall be a member of Borrower and/or SPE Component Entity that has no interest in the profits, losses and capital of Borrower and/or SPE Component Entity and has no right to receive any distributions of Borrower and/or SPE Component Entity assets, (iii) pursuant to Section 18-301 of the Delaware Limited Liability Company Act (the "Act"), Special Member shall not be required to make any capital contributions to Borrower and/or SPE Component Entity and shall not receive a limited liability company interest in Borrower and/or SPE Component Entity, (iv) Special Member, in its capacity as Special Member, may not bind Borrower and/or SPE Component Entity, and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower and/or SPE Component Entity, including, without limitation, the merger, consolidation or conversion of Borrower and/or SPE Component Entity; provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower and/or SPE Component Entity of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower and/or SPE Component Entity as Special Member, Special Member shall not be a member of Borrower and/or SPE Component Entity.

(d) In the event Borrower and/or SPE Component Entity is a single-member Delaware limited liability company, the LLC Agreement shall provide that upon the occurrence of any event that causes the Member to cease to be a member of Borrower and/or SPE Component Entity, to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower and/or SPE Component Entity, agree in writing (i) to continue Borrower and/or SPE Component Entity and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower and/or SPE Component Entity, effective as of the occurrence of the event that terminated the continued membership of Member of Borrower and/or SPE Component Entity in Borrower and/or SPE Component Entity. Any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower and/or SPE Component Entity and upon the occurrence of such an event, the business of Borrower and/or SPE Component Entity shall continue without dissolution. The LLC Agreement shall provide that each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower and/or SPE Component Entity upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower and/or SPE Component Entity.

(e) The organizational documents of Borrower and SPE Component Entity shall provide an express acknowledgment that Lender is an intended third-party beneficiary of the "special purpose" provisions of such organizational documents.

(f) Lender acknowledges that as of the Closing Date, Holdings satisfies the requirement of the SPE Component Entity and the provisions of Sections 6.1(c) and 6.1(d) above.

Section 6.2. Change of Name, Identity or Structure

Borrower shall not change or permit to be changed (a) Borrower's name, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Agreement, (d) the corporate, partnership or other organizational structure of Borrower, or SPE Component Entity, (e) Borrower's state of organization, or (f) Borrower's organizational identification number, without in each case notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. In addition, Borrower shall not change or permit to be changed any organizational documents of Borrower or SPE Component Entity if such change would adversely impact the covenants set forth in Section 6.1 and 6.4 hereof. Borrower authorizes Lender to file any financing statement or financing statement amendment required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property. If Borrower does not now have an organizational identification number and later obtains one, or if the organizational identification number assigned to Borrower subsequently changes, Borrower shall promptly notify Lender of such organizational identification number or change.

Section 6.3. Business and Operations

Borrower will qualify to do business and will remain in good standing under the laws of the State as and to the extent the same are required for the ownership, maintenance, management and operation of the Property.

Section 6.4. Independent Director

The organizational documents of SPE Component Entity shall include the following provisions: (a) at all times there shall be, and Borrower shall cause there to be, at least one Independent Director; (b) the board of directors of such SPE Component Entity shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires unanimous vote of the board of directors of such SPE Component Entity unless at the time of such action there shall be at one member of the board of directors who is an Independent Director; (c) such SPE Component Entity shall not, without the unanimous written consent of its board of directors including the Independent Director, on behalf of itself or Borrower, take any Material Action or any action that might cause such entity to become insolvent, and when voting with respect to such matters, the Independent Director shall consider only the interests of the Borrower, including its creditors; and (d) no Independent Director of such SPE Component Entity may be removed or replaced unless such SPE Component Entity provides Lender with not less than three (3) Business Days' prior written notice of (i) any proposed removal of an Independent Director, together with a statement as to

the reasons for such removal, and (ii) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements set forth in the organizational documents for an Independent Director. No resignation or removal of an Independent Director shall be effective until a successor Independent Director is appointed and has accepted his or her appointment. No Independent Director may be removed other than for Cause. "Cause" means, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute willful disregard of such Independent Director's duties as set forth in the Borrower's organizational documents, (ii) that such Independent Director has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) that such Independent Director is unable to perform his or her duties as Independent Director due to death, disability or incapacity, or (iv) that such Independent Director no longer meets the definition of Independent Director.

ARTICLE 7
NO SALE OR ENCUMBRANCE

Section 7.1. Transfer Definitions

For purposes of this Article 7 an "**Affiliated Manager**" shall mean any managing agent in which Borrower, Borrower Principal, any SPE Component Entity or any affiliate of such entities has, directly or indirectly, any legal, beneficial or economic interest; "**Control**" shall mean the power to direct the management and policies of a Restricted Party, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise; "**Restricted Party**" shall mean Borrower, and/or Holdings; and a "**Sale or Pledge**" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest.

Section 7.2. No Sale/Encumbrance

(a) Except as expressly permitted pursuant to Section 7.3 hereof, Borrower shall not cause or permit a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein nor permit a Sale or Pledge of an interest in any Restricted Party (in each case, a "**Prohibited Transfer**"), other than pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 5.13, without the prior written consent of Lender.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents, except with respect to any existing Lease or any Major Lease approved by Lender in accordance with this Agreement; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iv) if a Restricted Party is a limited or general

partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) if applicable, the removal or the resignation of Manager (including an Affiliated Manager) other than in accordance with Section 5.14.

Section 7.3. Permitted Transfers

Notwithstanding the provisions of Section 7.2, the following transfers shall not be deemed to be a Prohibited Transfer: (a) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer; (b) transfers for estate planning purposes of an individual's interests in any Restricted Party to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as such Restricted Party is reconstituted, if required, following such transfer and there is no change in Control of such Restricted Party as a result of such transfer; (c) the Sale or Pledge, in one or a series of transactions, of not more than forty-nine percent (49%) of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, (i) no such transfers shall result in a change in Control in the Restricted Party or change in control of the Property, (ii) following any transfers, Borrower and SPE Component Entity shall continue to satisfy the requirements of Section 6.1 hereof, (iii) as a condition to each such transfer, Lender shall receive not less than thirty (30) days prior written notice of such proposed transfer, and (iv) to the extent such transferee shall own twenty percent (20%) or more of the direct or indirect ownership interests in Borrower immediately following such transfer (provided such transferee owned less than twenty percent (20%) of the direct or indirect ownership interests in Borrower as of the Closing Date), Borrower shall deliver, at Borrower's sole cost and expense, customary searches (including, without limitation, credit, judgment, lien, litigation, bankruptcy, criminal and watch list) acceptable to Lender with respect to such transferee, or (d) the sale, transfer or issuance of shares of common stock in Borrower Principal, provided the same is publicly traded and listed on the New York Stock Exchange or another nationally recognized publicly traded stock exchange. Notwithstanding the foregoing, any transfer (other than a transfer pursuant to sub-section (d) above) that results in any Person and its Affiliates owning in excess of forty-nine percent (49%) of the ownership interests in a Restricted Party shall comply with the requirements of Section 7.4 hereof.

Section 7.4. Lender's Rights

Lender reserves the right to condition the consent to a Prohibited Transfer requested hereunder upon, among other things, (a) a modification of the terms hereof and an assumption of the Note and the other Loan Documents as so modified by the proposed Prohibited Transfer, (b) receipt of payment of a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan and all of Lender's expenses incurred in connection with such Prohibited Transfer, (c) receipt of written confirmation from the Rating Agencies that the Prohibited Transfer will not result in a downgrade, withdrawal or qualification of the initial, or if higher, then current ratings issued in connection with a Securitization, or if a Securitization has not occurred, any ratings to be assigned in connection with a Securitization, (d) the proposed transferee's continued compliance with the covenants set forth in this Agreement (including, without limitation, the covenants in Article 6) and the other Loan Documents, (e) a new manager for the Property and a new management agreement satisfactory to Lender, (f) to the extent such transferee shall own twenty percent (20%) or more of the direct or indirect ownership interests in Borrower immediately following such transfer (provided such transferee owned less than twenty percent (20%) of the direct or indirect ownership interests in Borrower as of the Closing Date), delivery by Borrower, at Borrower's sole cost and expense, customary searches (including without limitation credit, judgment, lien, litigation, bankruptcy, criminal and watch list) acceptable to Lender with respect to such transferee, and (g) the satisfaction of such other conditions and/or legal opinions as Lender shall determine in its sole discretion to be in the interest of Lender. All expenses incurred by Lender shall be payable by Borrower whether or not Lender consents to the Prohibited Transfer. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Prohibited Transfer made without Lender's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Lender has consented to any previous Prohibited Transfer.

Section 7.5. Assumption

Notwithstanding the foregoing provisions of this Article 7, following the date which is twelve (12) months from the Closing Date, Lender shall not unreasonably withhold condition or delay consent to a transfer of the Property in its entirety to, and the related assumption of the Loan by, any Person (a "Transferee") provided that each of the following terms and conditions are satisfied:

(a) no Event of Default has occurred and is continuing;

(b) Borrower shall have (i) delivered written notice to Lender of the terms of such prospective transfer not less than forty-five (45) days before the date on which such transfer is scheduled to close and, concurrently therewith, all such information concerning the proposed Transferee as Lender shall reasonably require and (ii) paid to Lender a non-refundable processing fee in the amount of \$25,000. Lender shall have the right to approve or disapprove the proposed transfer based on its then current underwriting and credit requirements for similar loans secured by similar properties which loans are sold in the secondary market, such approval not to be unreasonably withheld. In determining whether to give or withhold its approval of the proposed transfer, Lender shall consider the experience and track record of Transferee and its

principals in owning and operating facilities similar to the Property, the financial strength of Transferee and its principals, the general business standing of Transferee and its principals and Transferee's and its principals' relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, that, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable and, if given, may be given subject to such conditions as Lender may deem reasonably appropriate;

(c) Borrower shall have paid to Lender, concurrently with the closing of such transfer, (i) a non-refundable assumption fee in an amount equal to 0.30% for the first transfer and one percent (1.0%) of the then outstanding principal balance of the Note for each subsequent transfer, and (ii) all reasonable out-of-pocket costs and expenses, including reasonable attorneys' fees and Rating Agency fees, incurred by Lender in connection with the transfer;

(d) (i) Transferee shall have assumed and agreed to pay the Debt as and when due and shall have assumed all other obligations of Borrower under the Loan Documents subject to the provisions of Article 15 hereof and, prior to or concurrently with the closing of such transfer, Transferee and its constituent partners, members or shareholders as Lender may require, shall have executed, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and (ii) if required by Lender, a Person affiliated with Transferee and acceptable to Lender (a "**Transferee Principal**") shall have assumed the obligations of Borrower Principal under the Loan Documents with respect to all acts and events occurring or arising after the transfer of the Property pursuant to this Section 7.5;

(e) Borrower and Transferee, without any cost to Lender, shall furnish any information reasonably requested by Lender for the preparation of, and shall authorize Lender to file, new financing statements and financing statement amendments and other documents to the fullest extent permitted by applicable law, and shall execute any additional documents reasonably requested by Lender;

(f) Borrower shall have delivered to Lender, without any cost or expense to Lender, such endorsements to Lender's Title Insurance Policy insuring that fee simple or leasehold title to the Property, as applicable, is vested in Transferee (subject to Permitted Encumbrances), hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the transfer, all in form and substance satisfactory to Lender;

(g) Transferee shall have furnished to Lender, if Transferee is a corporation, partnership, limited liability company or other entity, all appropriate papers evidencing Transferee's organization and good standing, and the qualification of the signers to execute the assumption of the Debt, which papers shall include certified copies of all documents relating to the organization and formation of Transferee and of the entities, if any, which are partners or members of Transferee. Transferee and such constituent partners, members or shareholders of Transferee (as the case may be), as Lender shall require, shall comply with the covenants set forth in Article 6 hereof;

(h) Transferee shall assume the obligations of Borrower under any Management Agreement or provide a new management agreement with a new manager which meets with the requirements of Section 5.14 hereof and assign to Lender as additional security such new management agreement;

(i) Transferee shall furnish an opinion of counsel satisfactory to Lender and its counsel (A) that Transferee's formation documents provide for the matters described in subparagraph (g) above, (B) that the assumption of the Debt has been duly authorized, executed and delivered, and that the Note, the Mortgage, this Agreement, the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee in accordance with their terms, (C) that Transferee and any entity which is a controlling stockholder, member or general partner of Transferee, have been duly organized, and are in existence and good standing, and (E) with respect to such other matters as Lender may reasonably request;

(j) if required by Lender, Lender shall have received confirmation in writing from the Rating Agencies that rate the Securities to the effect that the transfer will not result in a qualification, downgrade or withdrawal of any rating initially assigned or to be assigned to the Securities;

(k) Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section 7.5; and

(l) Intentionally omitted.

A consent by Lender with respect to a transfer of the Property in its entirety to, and the related assumption of the Loan by, a Transferee pursuant to this Section 7.5 shall not be construed to be a waiver of the right of Lender to consent to any subsequent Sale or Pledge of the Property. Upon the transfer of the Property pursuant to this Section 7.5, Borrower and Borrower Principal (if a Transferee Principal has assumed the obligations of Borrower Principal under the Loan Documents with respect to all acts and events occurring or arising after the transfer of the Property pursuant to this Section 7.5) shall be relieved of all liability under the Loan Documents for acts, events, conditions, or circumstances occurring or arising after the date of such transfer, except to the extent that such acts, events, conditions, or circumstances are the proximate result of acts, events, conditions, or circumstances that existed prior to the date of such transfer, whether or not discovered prior or subsequent to the date of such transfer. All reasonable out-of-pocket costs and expenses incurred by Lender pursuant to this Section 7.5 shall be payable by Borrower whether or not the transfer contemplated hereunder actually occurs.

Section 7.6. Substitution

Subject to the terms and conditions set forth in this Section 7.6, Borrower may obtain a release of the Lien of the Mortgage (and the related Loan Documents) on any Property (the "Substituted Property"), by substituting therefor another commercial property of like kind and quality acquired by Borrower or an Affiliate thereof (the "Substitute Property"), provided that any such substitution (a "Substitution") shall be subject, in each case, to the following conditions precedent are satisfied:

(A) The Allocated Loan Amounts for all Properties theretofore released pursuant to this Section 7.6 (and taking into account the then requested Substitution) shall not exceed twenty-five percent (25%) of the original principal amount of the Loan

(B) No Substitution shall occur during the twelve (12) month period preceding the Maturity Date.

(C) Lender shall have received at least sixty (60) days prior written notice requesting the Substitution and identifying the Substitute Property.

(D) Lender shall have received a fee equal to the greater of (a) one third of one percent (0.33%) of the Allocated Loan Amount for the Substituted Property and (b) \$15,000, for each Substitution.

(E) Lender shall have received an appraisal of the Substitute Property and Substituted Property, dated no more than sixty (60) days prior to the Substitution date, by an appraiser reasonably acceptable to the Rating Agencies (if the Loan has been Securitized) and Lender.

(F) The fair market value of the Substitute Property shall not be less than one hundred five percent (105%) of the greater of (A) the fair market value of the Substituted Property as of the Closing Date and (B) the fair market value of the Substituted Property as of the date immediately preceding the Substitution, which determination shall be made by Lender based on the appraisals delivered pursuant to clause (E) above.

(G) SPE Component Entity shall transfer its interest in the Substituted Property to a third party and shall assume the interest of the Substitute Property.

(H) The Substitute Property shall be leased to a Tenant with a credit rating (of its guarantor) that is at least equal to the better of (x) the credit rating of the Tenant at the Substituted Property as of the Closing Date and (y) the credit rating of the Tenant of the Substituted Property at the time of Substitution.

(I) The Substitute Property shall be leased (a) for a fixed rent equal to or better than 105% of the rent of the Substituted Property, (b) for a lease term (excluding any option to extend, renew or terminate the lease) of no less than the remaining lease term of the Tenant for the Substituted Property, (c) for a use consistent with that of the Substituted Property and (d) on a NNN basis, with the tenant responsible for all costs and expenses related to the operation and maintenance of the Property, including, but not limited to (i) Replacements, (ii) the payment of taxes and insurance and (iii) obtaining and maintaining insurance, as provided for herein.

(J) If the Loan is part of a Securitization, Lender shall have received (with Borrower's assistance) confirmation in writing from the Rating Agencies to the effect that such Substitution will not result in a withdrawal, qualification or

downgrade of the respective ratings in effect immediately prior to such Substitution for the securities, or any class thereof, issued in connection with the Securitization that are then outstanding. If the Loan is not part of a Securitization, Lender shall have consented in writing to such Substitution, which consent shall not be unreasonably withheld.

(K) No Event of Default shall have occurred and be continuing (unless such Substitution would cure such Event of Default, Lender consents to the Substitution and Borrower pays any and all fees and expenses related to the Event of Default and payable by Borrower pursuant to the terms of this Agreement), and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each Loan Document on Borrower's part to be observed or performed. Lender shall have received a certificate from Borrower confirming the foregoing, stating that the representations and warranties of Borrower contained in this Agreement and the other Loan Documents are true and correct in all material respects on and as of the date of the Substitution with respect to Borrower, the Properties and the Substitute Property and containing any other representations and warranties with respect to Borrower, the Properties, the Substitute Property or the Loan as the Rating Agencies may reasonably require, unless such certificate would be inaccurate, such certificate to be in form and substance reasonably satisfactory to the Rating Agencies.

(L) Borrower shall (A) have executed, acknowledged and delivered to Lender (I) such security instruments and UCC-1 financing statements with respect to the Substitute Property as Lender may reasonably require, together with a letter from Borrower countersigned by a title insurance company acknowledging receipt of such security instruments and financing statements and agreeing to record or file, as applicable, such security instruments and financing statements in the appropriate recording or filing offices so as to effectively create upon such recording and filing valid and enforceable Liens upon the Substitute Property, of the requisite priority, in favor of Lender (or such other trustee as may be desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents and (II) an Environmental Indemnity with respect to the Substitute Property and (B) have caused the Borrower Principal to acknowledge and confirm their respective obligations under the Loan Documents. The required security documents, financing statements and other documents shall be the same in form and substance as the counterparts of such documents executed and delivered with respect to the related Substituted Property subject to modifications reflecting only the Substitute Property as the property that is the subject of such documents and such modifications reflecting the laws of the state in which the Substitute Property is located as are customarily delivered in similar transactions in such state and delivering the opinion as to the enforceability of such documents required pursuant to clause (R) below. The security instrument encumbering the Substitute Property shall secure all amounts evidenced by the Note, provided that in the event that the jurisdiction in which the Substitute Property is located imposes a mortgage recording, intangibles or similar tax and does not permit the allocation of indebtedness for the purpose of

determining the amount of such tax payable, the principal amount secured by such security instrument shall be equal to one hundred twenty-five percent (125%) of the allocated loan amount of the Substitute Property. The amount of the Loan allocated to the Substitute Property (such amount being hereinafter referred to as the “**Substitute Release Price**”) shall equal an amount equal to twenty-five percent (25%) of the then current principal balance of the Loan.

(M) Lender shall have received (A) to the extent available any “tie-in” or similar endorsement to each title insurance policy insuring the Lien of an existing Mortgage as of the date of the Substitution with respect to the title insurance policy insuring the Lien of the Mortgage with respect to the Substitute Property and (B) a title insurance policy (or a marked, signed and redated commitment to issue such title insurance policy) insuring the Lien of the Mortgage encumbering the Substitute Property, issued by the title company that issued the title insurance policies insuring the Lien of the existing Mortgages (or any other reputable national title insurance company approved by Lender) and dated as of the date of the Substitution, with reinsurance and direct access agreements that replace such agreements issued in connection with the title insurance policy insuring the Lien of the Mortgage encumbering the Substituted Property. The title insurance policy issued with respect to the Substitute Property shall (1) provide coverage in the amount of the Substitute Release Price if the “tie-in” or similar endorsement described above is available or, if such endorsement is not available, in an amount equal to one hundred fifty percent (150%) of the Substitute Release Amount, (2) insure Lender that the relevant Mortgage creates a valid first lien on the Substitute Property encumbered thereby, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (3) contain such endorsements and affirmative coverages as are then available and are contained in the title insurance policies insuring the Liens of the existing Mortgages, and (4) name Lender as the insured. Lender also shall have received copies of paid receipts or other evidence showing that all premiums in respect of such endorsements and title insurance policies have been paid.

(N) Lender shall have received a current survey for the Substitute Property, certified to the title company and Lender and their successors and assigns, in the same form and having the same content as the certification of the survey of the Substituted Property prepared by a professional land surveyor licensed in the state in which the Substitute Property is located and acceptable to the Rating Agencies. Such survey shall reflect the same legal description contained in the title insurance policy relating to such Substitute Property and shall include, among other things, a metes and bounds description of the real property comprising part of such Substitute Property (unless such real property has been satisfactorily designated by lot number on a recorded plat). The surveyor’s seal shall be affixed to each survey and each survey shall certify that the surveyed property is not located in a “one-hundred-year flood hazard area.”

(O) Lender shall have received valid certificates of insurance indicating that the requirements for the policies of insurance required for a Property hereunder have been satisfied with respect to the Substitute Property and evidence of the payment of all premiums payable for the existing policy period.

(P) Lender shall have received a Phase I environmental report from an environmental consultant that typically provides such reports to Lender, and, if recommended under the Phase I environmental report, a Phase II environmental report, which conclude that the Substitute Property does not contain any hazardous materials and is not subject to any risk of contamination from any off-site hazardous materials. If any such report discloses the presence of any hazardous materials or the risk of contamination from any off-site hazardous materials, such report shall include an estimate of the cost of any related remediation and Borrower shall deposit with Lender an amount equal to one hundred twenty-five percent (125%) of such estimated cost, which deposit shall constitute additional security for the Loan and shall be released to Borrower upon the delivery to Lender of (A) an update to such report indicating that there are no longer any hazardous materials on the Substitute Property or any danger of contamination from any off-site hazardous materials that has not been fully remediated and (B) paid receipts indicating that the costs of all such remediation work have been paid.

(Q) Borrower shall deliver or cause to be delivered to Lender (A) updates certified by Borrower of all organizational documentation related to Borrower and/or the formation, structure, existence, good standing and/or qualification to do business delivered to Lender on the Disbursement Date; (B) good standing certificates, certificates of qualification to do business in the jurisdiction in which the Substitute Property is located (if required in such jurisdiction); and (C) resolutions of Borrower authorizing the Substitution and any actions taken in connection with such Substitution.

(R) Lender shall have received the following opinions of Borrower's counsel: (A) an opinion or opinions of counsel admitted to practice under the laws of the state in which the Substitute Property is located stating that the Loan Documents delivered with respect to the Substitute Property pursuant to clause (L) above are valid and enforceable in accordance with their terms, subject to the laws applicable to creditors' rights and equitable principles, and that Borrower is qualified to do business and in good standing under the laws of the jurisdiction where the Substitute Property is located or that Borrower is not required by applicable law to qualify to do business in such jurisdiction; (B) an opinion of counsel acceptable to the Rating Agencies if the Loan is part of a Securitization, or the Lender if the Loan is not part of a Securitization, stating that the Loan Documents delivered with respect to the Substitute Property pursuant to clause (L) above were duly authorized, executed and delivered by Borrower and that the execution and delivery of such Loan Documents and the performance by Borrower of its obligations thereunder will not cause a breach of, or a default under, any agreement, document or instrument to which Borrower is a party or to

which it or its properties are bound; (C) an opinion of counsel acceptable to, the Rating Agencies if the Loan is part of a Securitization, or the Lender if the Loan is not part of a Securitization, stating that subjecting the Substitute Property to the Lien of the related Mortgage and the execution and delivery of the related Loan Documents does not and will not affect or impair the ability of Lender to enforce its remedies under all of the Loan Documents or to realize the benefits of the cross-collateralization provided for thereunder; (D) intentionally omitted; (E) an opinion of counsel acceptable to, the Rating Agencies if the Loan is part of a Securitization, or the Lender if the Loan is not part of a Securitization, stating that the Substitution and the related transactions are arms-length transactions and do not constitute a fraudulent conveyance under applicable bankruptcy and insolvency laws and (F) if the Loan is part of a Securitization, an opinion of counsel obtained by the applicable servicer at Borrower's expense, acceptable to the Rating Agencies stating that any REMIC (as defined in the Note) that has acquired the loan secured hereby will not fail to maintain its status as a REMIC solely as a result of such Substitution and that the Substitution and related transaction would not be a "Significant Modification" and would not cause the loan to fail to be a "Qualified Mortgage" under a REMIC. Notwithstanding the foregoing provisions of this Section 7.6, if immediately following the Substitution, the LTV Ratio (as determined by Lender using any commercially reasonable valuation method) is greater than one hundred twenty-five percent (125%) (excluding personal property and going concern value), the Borrower must pay down the principal balance of the Loan by a "qualified amount" as that term is defined in IRS Revenue Procedure 2010-30, as the same may be amended, replaced, supplemented, or modified from time to time, unless the Lender receives an opinion of counsel that if such amount is not paid, the Securitization will not fail to maintain its status as a REMIC Trust.

(S) Borrower shall have paid, or escrowed with Lender, all due and payable insurance premiums (unless the Property is covered by a blanket insurance policy or Tenant provides self-insurance that is satisfactory to Lender), taxes and other charges relating to each of the Properties and the Substitute Property, including without limitation, (i) accrued but unpaid insurance premiums relating to each of the Properties and the Substitute Property, and (ii) currently due and payable Taxes (including any in arrears) relating to each of the Properties and the Substitute Property and (iii) currently due and payable maintenance charges and other impositions relating to each of the Properties and Substitute Property. Any Impounds or other amounts held by Lender with respect to the Substituted Property shall, at the Borrower's election, be applied to (i) amounts payable by Borrower in connection with this Section 7.6(S), (ii) returned to Borrower, or (iii) or applied to other amounts due and payable by Borrower under this Agreement.

(T) Borrower shall have paid or reimbursed Lender for all reasonable third party costs and expenses incurred by Lender (including, without limitation, reasonable attorney's fees and disbursements) in connection with the Substitution and Borrower shall have paid all recording charges, filing fees, taxes or other

expenses (including, without limitation, mortgage and intangibles taxes and documentary stamp taxes) payable in connection with the Substitution. Borrower shall have paid all reasonable costs and expenses of the Rating Agencies incurred in connection with the Substitution.

(U) Lender shall have received annual operating statements for the Substitute Property for the most current completed fiscal year and a current operating statement for the Substituted Property, each certified (to Borrower's knowledge) to Lender as being true and correct in all material respects and a certificate from Borrower certifying (to Borrower's knowledge) that there has been no material adverse change in the financial condition of the Substitute Property since the date of such operating statements.

(V) Borrower shall have delivered to Lender estoppel certificate from the existing tenant of the Substitute Property. All such estoppel certificates shall be substantially in the form approved by Lender in connection with the origination of the Loan or in the form specified in the applicable Lease. If an estoppel certificate indicates that all tenant improvement work required under the subject lease has not yet been completed, Borrower shall, if required by the Rating Agencies, deliver to Lender financial statements indicating that Borrower has adequate funds to pay all costs related to such tenant improvement work as required under such lease.

(W) Lender shall have received a copy of the tenant lease affecting the Substitute Property certified to Borrower's knowledge as being true and correct.

(X) Lender shall have received subordination, nondisturbance and attornment agreements in the form approved by Lender in connection with the origination of the Loan with respect to the tenant at the Substitute Property.

(Y) Lender shall have received (A) an endorsement to the title insurance policy insuring the Lien of the Mortgage encumbering the Substitute Property insuring that the Substitute Property constitutes a separate tax lot or, if such an endorsement is not available in the state in which the Substitute Property is located, a letter from the title insurance company issuing such title insurance policy stating that the Substitute Policy constitutes a separate tax lot or (B) a letter from the appropriate taxing authority stating that the Substitute Property constitutes a separate tax lot (or other evidence with respect thereto).

(Z) Lender shall have received a physical conditions report with respect to the Substitute Property stating that the Substitute Property and its use comply in all material respects with all applicable legal requirements (including, without limitation, zoning, subdivision and building laws) and that the Substitute Property is in good condition and repair and free of material damage or waste. If compliance with any legal requirements are not addressed by the physical conditions report, such compliance shall be confirmed by delivery to Lender of a certificate of an architect licensed in the state in which the Substitute Property is

located, a letter from the municipality in which such Property is located, a certificate of a surveyor that is licensed in the state in which the Substitute Property is located (with respect to zoning and subdivision laws), an ALTA 3.1 zoning endorsement to the title insurance policy delivered pursuant to clause (O) above (with respect to zoning laws) or a subdivision endorsement to the title insurance policy delivered pursuant to clause (O) above (with respect to subdivision laws). If the physical conditions report recommends that any repairs be made with respect to the Substitute Property, such physical conditions report shall include an estimate of the cost of such recommended repairs and Borrower shall deposit with Lender an amount equal to one hundred twenty-five percent (125%) of such estimated cost, which deposit shall constitute additional security for the Loan and shall be released to Borrower upon the delivery to Lender of (A) an update to such physical conditions report or a letter from the engineer that prepared such physical conditions report indicating that the recommended repairs were completed in good and workmanlike manner and (B) paid receipts indicating that the costs of all such repairs have been paid.

(AA) To the extent there is a Management Agreement, Lender shall have received a certified copy reflecting the Substitute Property as a property managed pursuant thereto and Manager shall have executed and delivered to Lender a consent and subordination agreement with respect to such management agreement in the same form as provided for herein.

(BB) Lender shall have received such other and further approvals, opinions, documents and information in connection with the Substitution as reasonably requested by the Rating Agencies if the Loan is part of a Securitization, or the Lender if the Loan is not part of a Securitization.

(CC) Lender shall have received copies of all contracts and agreements relating to the leasing and operation of the Substitute Property together with a certification of Borrower attached to each such contract or agreement certifying that the attached copy is a true and correct copy of such contract or agreement and all amendments thereto.

(DD) Borrower shall submit to Lender, not less than ten (10) days prior to the date of such Substitution, a release of Lien (and related Loan Documents) for the Substituted Property for execution by Lender. Such release shall be in a form appropriate for the jurisdiction in which the Substituted Property is located. Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 7.6 have been satisfied.

(EE) Upon the satisfaction of the foregoing conditions precedent, Lender will release its Lien from the Substituted Property to be released and the Substitute Property shall be deemed to be a Property for purposes of this Agreement and the Substitute Release Price with respect to such Substitute Property shall be deemed to be the Release Price with respect to such Substitute Property for all purposes hereunder.

ARTICLE 8
INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 8.1. Insurance

(a) Subject to sub-section (g) below, Borrower shall obtain and maintain, or cause to be maintained, at all times insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive "special causes of loss" form of insurance (or its equivalent) on the Improvements and the Personal Property (A) in an amount equal to not less than one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings); (B) written on a replacement cost basis and containing either an agreed amount endorsement with respect to the Improvements and Personal Property or a waiver of all co-insurance provisions; (C) providing for no deductible in excess of \$25,000 for all such insurance coverage; (D) at all times insuring against at least those hazards that are commonly insured against under a "special causes of loss" form of policy, as the same shall exist on the date hereof, and together with any increase in the scope of coverage provided under such form after the date hereof; and (E) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements and containing an "Ordinance or Law Coverage" or "Enforcement" endorsement. In addition, Borrower shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a "special flood hazard area" designated by the Federal Emergency Management Agency, flood hazard insurance in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, together with such "excess flood" insurance in such amount and with such deductible as Lender may reasonably require; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Lender in the event the Property is located in an area with a high degree of seismic risk, provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the special causes of loss form required under this subsection (i);

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, with such insurance (A) to be on the so-called "occurrence" form with a general aggregate limit of not less than \$2,000,000 and a per occurrence limit of not less than \$1,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; and (4) contractual liability;

(iii) loss of rents insurance or business income insurance, as applicable, (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) which provides that after the physical loss to the Improvements and Personal Property occurs, the loss of rents or income, as applicable, will be insured until completion of Restoration or the expiration of eighteen (18) months, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) which contains an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. For hotels, motels, health care, and other property types without a standard rent roll, the amount of business income insurance required shall be not less than eighteen (18) months of debt service, taxes, insurance, and other fixed expenses. The amount of such loss of rents or business income insurance, as applicable, shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property for the succeeding period of coverage as required above. All proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in the Note, this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such loss of rents or business income insurance, as applicable;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called Builder's Risk Completed Value form (1) on a non-reporting basis, (2) against "special causes of loss" insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the State, and employer's liability insurance in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) excess liability insurance in an amount not less than \$10,000,000 per occurrence on terms consistent with the commercial general liability insurance required under subsection (ii) above; and

(viii) upon sixty (60) days' written notice, such other reasonable insurance and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards (including, but not limited to, sinkhole, mine subsidence, mold, spores or fungus) which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) Subject to sub-section (g) below, all insurance provided for in Section 8.1(a) shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**"), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A-" or better by S&P (and the equivalent ratings for Moodys and Fitch) or such other ratings approved by Lender. The Policies described in Section 8.1(a) shall designate Lender and its successors and assigns as additional insureds, mortgagees and/or loss payee as deemed appropriate by Lender. To the extent such Policies are not available as of the Closing Date, Borrower shall deliver to Lender prior to the Closing Date an Acor 28 or similar certificate of insurance evidencing the coverages and amounts required hereunder and, upon request of Lender as soon as available after the Closing Date, certified copies of all Policies. Not less than ten (10) days prior to the expiration dates of any insurance coverage in place with respect to the Property, Borrower shall deliver to Lender an Acor 28 or similar certificate, accompanied by evidence satisfactory to Lender of payment of the premiums due in connection therewith (the "**Insurance Premiums**"), and, as soon as available thereafter, certified copies of all renewal Policies.

(c) Subject to sub-section (g) below, any blanket insurance Policy shall provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 8.1(a) hereof; provided, however, any blanket insurance policy that does not specifically allocate to the Property the amount of coverage from time to time required hereunder shall be subject to Lender's reasonable approval after taking into account, among other things, the amount, location, number and type of properties covered by such blanket insurance policy.

(d) Subject to sub-section (g) below, all Policies provided for or contemplated by Section 8.1(a), except for the Policy referenced in Section 8.1(a)(v), shall name Borrower as the insured and Lender as the additional insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) Subject to sub-section (g) below, all Policies provided for in Section 8.1(a) shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' prior written notice to Lender and any other party named therein as an additional insured;

(iii) the issuers thereof shall give written notice to Lender if the Policies have not been renewed thirty (30) days prior to its expiration;

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and

(v) the Policies do not contain an exclusion for acts of terrorism.

(f) Subject to sub-section (g) below, if at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, obtaining such insurance coverage as Lender in its sole discretion deems appropriate. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Mortgage and shall bear interest at the Default Rate.

(g) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, to the extent that any portion of the Property consisting of an entire building separate in all respect from any other building comprising part of the Property is occupied by a single Tenant and Tenant provides insurance satisfying the requirements of its Lease, such insurance shall satisfy or shall be deemed to satisfy, with respect to the corresponding Property, the requirements hereunder and the obligations of Borrower. In addition, provided no default shall exist under such Tenant's Lease such that Borrower is pursuing the termination of the applicable Lease or Lender reasonably determines that such default has a material effect on Tenant's ability to perform under such Tenant's Lease and further provided that such Tenant (or the corporate guarantor of such Tenant's Lease) shall maintain a credit rating issued by S&P of BBB- or better (or an equivalent rating issued by another nationally recognized Rating Agency reasonably acceptable to Lender), such Tenant shall be permitted to self-insure in accordance with its Lease, and such self-insurance shall be deemed to satisfy the requirements hereof. Lender acknowledges that it has received and reviewed the Existing Leases and the insurance in place as of the date hereof shall be deemed to satisfy the foregoing requirements of Section 8.1 as in effect on the date hereof.

Section 8.2. Casualty

If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt notice of such damage to Lender and shall

promptly commence and diligently prosecute the Restoration of the Property in accordance with Section 8.4 or if Borrower is required to do so pursuant to the terms of any Lease. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. Borrower shall adjust all claims for Insurance Proceeds in consultation with, and approval of, Lender; provided, however, if an Event of Default has occurred and is continuing, Lender shall have the exclusive right to participate in the adjustment of all claims for Insurance Proceeds. Notwithstanding anything to the contrary in this Section 8.2, to the extent any Lease remains in effect and the Tenant thereunder remains liable for the obligations under such Lease, the disposition of any amounts, awards or payments payable with respect to any Casualty relating to the Property shall be governed by such Lease. Notwithstanding anything to the contrary contained herein, Borrower's obligations to promptly commence and diligently prosecute the Restoration of the Property in accordance with this Section 8.2 or take other actions on the Property under this Section are subject to any restrictions on the property owner to take such actions contained in the applicable Leases. To the extent the obligations of Borrower to restore the Property or take other actions on the Property are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section so long as Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease including, without limitation, the exercise of remedies available under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower's obligations to Lender under this Section 8.2 and this Agreement.

Section 8.3. Condemnation

Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property of which Borrower has knowledge and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 8.4, whether or not Lender makes any Net Proceeds available pursuant to Section 8.4. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt. Notwithstanding anything to the contrary in this Section 8.3, to the extent any Lease remains in effect and the Tenant thereunder remains liable for the obligations under such Lease,

the disposition of any amounts, awards or payments payable with respect to any Condemnation relating to the Property shall be governed by such Lease. To the extent the obligations of Borrower to restore the Property or take other actions on the Property are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section so long as Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease including, without limitation, the exercise of remedies available under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower's obligations to Lender under this Section 8.3 and this Agreement.

Section 8.4. Restoration

The following provisions shall apply in connection with the Restoration of each individual Property:

(a) If the Net Proceeds shall be less than \$150,000 and the costs of completing the Restoration shall be less than \$150,000, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 8.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement to the extent obligated under the applicable Lease.

(b) If the Net Proceeds are equal to or greater than \$150,000 or the costs of completing the Restoration are equal to or greater than \$150,000, Lender shall make the Net Proceeds available for the Restoration subject to the conditions of and in accordance with the provisions of this Section 8.4. The term "**Net Proceeds**" for purposes of this Section 8.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 8.1(a)(i), (iv), (vi) and (viii) as a result of a Casualty, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same ("**Insurance Proceeds**"), or (ii) the net amount of the Award as a result of a Condemnation, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same ("**Condemnation Proceeds**"), whichever the case may be.

(i) Unless the terms of a Lease (or ground lease) approved by Lender, including the Existing Leases, require that the Net Proceeds be used for the Restoration of the Property, the Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met (Lender acknowledges that it has approved each Existing Lease):

(A) no Event of Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than thirty percent (30%) of the total floor area of the Improvements on the Property has been damaged, destroyed or rendered unusable as a result of a Casualty and the amount of damage does not exceed thirty percent (30%) of the Property's fair market value immediately prior to the occurrence of such Casualty, or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%)

of the land constituting the Property is taken, such land is located along the perimeter or periphery of the Property, and less than fifteen percent (15%) of the aggregate floor area of the Improvements is taken and the taking does not exceed fifteen percent (15%) of the Property's fair market value immediately prior to the occurrence of such taking;

(C) Leases covering in the aggregate at least seventy-five percent (75%) of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, and each Major Lease in effect as of such date shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration;

(D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than ninety (90) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of the insurance coverage referred to in Section 8.1(a)(iii) above;

(F) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases or material agreements affecting the Property, (3) such time as may be required under applicable zoning law, ordinance, rule or regulation, or (4) the expiration of the insurance coverage referred to in Section 8.1(a)(iii);

(G) the Property and the use thereof after the Restoration will be in compliance with and permitted under all Legal Requirements or will be legally non-conforming;

(H) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;

(J) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be reasonably acceptable to Lender;

(K) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable judgment to cover the cost of the Restoration; and

(L) Lender shall be satisfied that the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal or greater than 1.55 to 1.0.

(ii) Subject to the terms of the applicable Lease, the Net Proceeds shall be held by Lender until disbursements commence, and, until disbursed in accordance with the provisions of this Section 8.4(b), shall constitute additional security for the Debt and other obligations under the Loan Documents. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all the conditions precedent to such advance, including those set forth in Section 8.4(b)(i), have been satisfied, (B) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the related Restoration item have been paid for in full, and (C) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company issuing the Title Insurance Policy. Notwithstanding the foregoing, Insurance Proceeds from the Policies required to be maintained by Borrower pursuant to Section 8.1(a)(iii) shall be controlled by Lender at all times, shall not be subject to the provisions of this Section 8.4 and shall be used solely for the payment of the obligations under the Loan Documents and Operating Expenses.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Restoration Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts in excess of \$100,000 under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Restoration Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration, including, without limitation, reasonable counsel fees and disbursements and the Restoration Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Restoration Consultant, minus the Restoration Retainage. The term "**Restoration Retainage**" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Restoration Consultant, until the Restoration has been completed. The Restoration Retainage shall be reduced to five percent (5%) of the costs

incurred upon receipt by Lender of satisfactory evidence that fifty percent (50%) of the Restoration has been completed. The Restoration Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 8.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Restoration Retainage shall not be released until the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 8.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Restoration Retainage; provided, however, that Lender will release the portion of the Restoration Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Restoration Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Restoration Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender in consultation with the Restoration Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Restoration Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 8.4(b) shall constitute additional security for the Debt and other obligations under the Loan Documents.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Restoration Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 8.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Agreement or any of the other Loan Documents.

(c) Following the Securitization of the Loan, if, after a taking of any portion of the Property by a condemning authority, the ratio (the “**LTV Ratio**”) of the unpaid principal balance of the Loan to the value of the remaining real property relating to the Property (as determined by Lender using any commercially reasonable valuation method) is greater than one hundred twenty-five percent (125%) (based solely on the value of the real property and excluding any personal property or going concern value), then Borrower’s right to receive Condemnation Proceeds or use the same toward Restoration under Sections 8.4(a) or (b) above shall be subject to the right of Lender, at its option, to retain and apply toward the payment of the principal balance of the Debt the least of the following amounts: (i) all Condemnation Proceeds, (ii) the fair market value of the such portion of the real property relating to the Property taken at the time of the taking, (iii) an amount such that the LTV Ratio following the taking is not greater than the LTV Ratio immediately prior to the taking (in each case, of the real property relating to the Property). All Net Proceeds not required to be made available for the Restoration, shall be returned to Borrower as excess Net Proceeds pursuant to Section 8.4(b)(vii), or in the case of Condemnation Proceeds applied by Lender in accordance with this Section 8.4(c), may (x) be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, (y) at the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes and upon such conditions as Lender shall designate. If, pursuant to this Section 8.4, Lender shall receive and retain Net Proceeds, the Debt shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction thereof without prepayment fee or penalty.

(d) In the event of foreclosure of the Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure, Lender or other transferee in the event of such other transfer of title.

(e) Notwithstanding anything to the contrary in this Section 8.4, to the extent any Lease remains in effect and the Tenant thereunder remains liable for the obligations under such Lease, the Restoration of the Property shall be governed by such Lease, including the obligation of Lender to provide or permit the Tenant use of such Net Proceeds.

ARTICLE 9 RESERVE FUNDS

Section 9.1. Required Repairs

Borrower shall make the repairs and improvements to the Property set forth on Schedule II and as more particularly described in the Property Condition Report prepared in connection with the closing of the Loan (such repairs hereinafter referred to as “Required Repairs”). Borrower shall complete the Required Repairs in a good and workmanlike manner on or before the date that is twelve (12) months from the date hereof. Notwithstanding anything to the

contrary contained herein, Borrower's obligations to complete the Required Repairs in accordance with this Section 9.1 are subject to any restrictions on the property owner to take such actions contained in the applicable Leases. To the extent the obligations of Borrower to complete the Required Repairs are the responsibility of the Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section 9.1 so long as Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease.

Section 9.2. Replacements

(a) If required by the applicable Lease, on an ongoing basis throughout the term of the Loan, Borrower shall make capital repairs, replacements and improvements necessary to keep the Property in good order and repair and in a good marketable condition or prevent deterioration of the Property, including, but not limited to, those repairs, replacements and improvements as reasonably determined by Lender (including for furniture, fixtures and equipment) and more particularly described in the Property Condition Report prepared in connection with the closing of the Loan (collectively, the "**Replacements**"). Borrower shall complete all Replacements in a good and workmanlike manner as soon as commercially reasonable after commencing to make each such Replacement.

(b) If, at any time Lender reasonably determines that Borrower is obligated pursuant to the terms of any Lease and after and during the continuation of an Event of Default, to fund the Replacements, Borrower shall establish an Eligible Account with Lender or Lender's agent to fund the Replacements (the "**Replacement Reserve Account**") into which Borrower shall deposit an amount reasonably acceptable to Lender. Amounts so deposited shall hereinafter be referred to as "**Replacement Reserve Funds**." Lender may, in its reasonable discretion, adjust the Replacement Reserve Monthly Deposit from time to time to an amount sufficient to maintain the proper maintenance and operation of the Property. In the event Lender shall at any time increase the Replacement Reserve Monthly Deposit, Borrower may, at its election, request that Lender obtain, at the sole cost and expense of Borrower, a Property Condition Report prepared by an engineer selected by Lender in its reasonable discretion, in which case the Replacement Reserve Monthly Deposit shall be adjusted by Lender based on the results of such report, provided that in no event shall such amounts be reduced below the initial amount of the Replacement Reserve Monthly Deposit set forth in herein.

Section 9.3. Intentionally Omitted

Section 9.4. Required Work

To the extent Borrower is obligated to make any Replacements pursuant to any Lease, Borrower shall diligently pursue such Replacements (the "**Required Work**") to completion in accordance with the following requirements:

(a) Lender reserves the right, at its option, to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Required Work to the extent such contracts or work orders exceed \$150,000. Upon Lender's written request, Borrower shall collaterally assign any contract or subcontract to Lender.

(b) In the event Lender determines in its reasonable discretion that any Required Work is not being or has not been performed in a workmanlike or timely manner, Lender shall have the option to withhold disbursement for such unsatisfactory Required Work without providing any additional written notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder, or (ii) provide written notice to Borrower detailing information on the conditions Lender has identified as unworkmanlike or untimely. Borrower shall then have ten (10) Business Days after receipt of such notice to correct or cause to be corrected the conditions identified in such notice. In the even the unworkmanlike conditions continue after such ten (10) Business Day period, Lender shall have the option to proceed under existing contracts or to contract with third parties to complete such Required Work and to apply the Replacement Reserve Funds toward the labor and materials necessary to complete such Required Work, without providing any additional written notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(c) In the event Lender withholds disbursements and proceeds to complete the Required Work pursuant to Section 9.4(b), Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete the Required Work and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Reserve Funds, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake the Required Work in the name of Borrower upon Borrower's failure to do so in a workmanlike and timely manner. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to use any of the Reserve Funds for the purpose of making or completing the Required Work; (ii) to make such additions, changes and corrections to the Required Work as shall be necessary or desirable to complete the Required Work; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of the Required Work, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do on its own behalf to fulfill the terms of this Agreement.

(d) Nothing in this Section 9.4 shall: (i) make Lender responsible for making or completing the Required Work; (ii) require Lender to expend funds in addition to the Reserve Funds to make or complete any Required Work; (iii) obligate Lender to proceed with the Required Work; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Required Work.

(e) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties performing

Required Work pursuant to this Section 9.4 to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Required Work and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Required Work which are or may be kept at the Property, and to complete any Required Work made pursuant to this Section 9.4. Borrower shall use commercially reasonable efforts to cause all contractors and subcontractors to cooperate with Lender and Lender's representatives or such other persons described above in connection with inspections described in this Section 9.4 or the completion of Required Work pursuant to this Section 9.4.

(f) Lender may, to the extent any Required Work would reasonably require an inspection of the Property, inspect the Property at Borrower's expense prior to making a disbursement of the Reserve Funds in order to verify completion of the Required Work for which reimbursement is sought. Borrower shall pay Lender a reasonable inspection fee not exceeding \$1,000 for each such inspection. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of the Reserve Funds. Borrower shall pay customary and reasonable and customary expenses of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(g) The Required Work and all materials, equipment, fixtures, or any other item comprising a part of any Required Work shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialman's or other Liens (except for Permitted Encumbrances).

(h) Before each disbursement of the Reserve Funds for Required Work, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's or other Liens of any nature have been placed against the Property since the date of recordation of the Mortgage and that title to the Property is free and clear of all Liens (except for Permitted Encumbrances).

(i) All Required Work shall comply with all Legal Requirements and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(j) Borrower hereby assigns to Lender all rights and claims Borrower may have against all Persons supplying labor or materials in connection with the Required Work; provided, however, that Lender may not pursue any such rights or claims unless an Event of Default has occurred and remains uncured.

Section 9.5. Release of Reserve Funds

(a) Upon written request from Borrower and satisfaction of the requirements set forth in this Agreement, Lender shall disburse to Borrower amounts from the Replacement Reserve Account to the extent necessary to pay for or reimburse Borrower for the actual costs of any approved Replacements. Notwithstanding the preceding sentence, in no event shall Lender be

required to (x) disburse funds from any of the Reserve Accounts if an Event of Default exists, or (y) disburse funds from the Replacement Reserve Account to reimburse Borrower for the costs of routine repairs or maintenance to the Property.

(b) With each request for disbursement, Borrower shall certify in writing to Lender that all Required Work has been performed in accordance with all Legal Requirements and that all such Required Work has been completed lien free and paid for in full or will be paid for in full upon disbursement of the requested funds. In addition, each request for disbursement in excess of \$25,000 shall be on a form provided or approved by Lender and shall (i) include copies of invoices for all items or materials purchased and all labor or services provided, (ii) specify (A) the Required Work for which the disbursement is requested, (B) the quantity and price of each item purchased, if the Required Work includes the purchase or replacement of specific items, (C) the price of all materials (grouped by type or category) used in any Required Work other than the purchase or replacement of specific items, and (D) the cost of all contracted labor or other services applicable to each Required Work for which such request for disbursement is made, and (iii) if requested by Lender, conditional lien waivers from each contractor, supplier, materialman, mechanic or subcontractor with respect to the completion of its work or delivery of its materials. Except as provided in Section 9.5(d), each request for disbursement shall be made only after completion of the Replacement (or the portion thereof completed in accordance with Section 9.5(d)), or the full performance by the leasing agent of its obligations (in the case of Leasing Commissions), as applicable, for which disbursement is requested. Borrower shall provide Lender evidence satisfactory to Lender in its reasonable judgment of such completion or performance.

(c) Any lien waiver delivered hereunder shall conform to all Legal Requirements and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current disbursement request.

(d) If (i) the cost of any item of Required Work exceeds \$50,000, (ii) the contractor performing such Required Work requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for disbursement from the Reserve Accounts may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of work, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, and (D) in the case of a Replacement, funds remaining in the Replacement Reserve Account are, in Lender's reasonable judgment, sufficient to complete such Replacement and other Replacements when required.

(e) Borrower shall not make a request for, nor shall Lender have any obligation to make, any disbursement from any Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) in any amount less than the lesser of (i) \$10,000 or (ii) the total cost of the Required Work for which the disbursement is requested.

(f) Intentionally Omitted.

(g) In the event Borrower requests a disbursement from the Replacement Reserve Account to pay for or to reimburse Borrower for the actual cost of labor or materials used in connection with repairs or improvements other than the Replacements specified in the Property Condition Report prepared in connection with the closing of the Loan (an “**Additional Replacement**”), Borrower shall disclose in writing to Lender the reason why funds in the Replacement Reserve Account should be used to pay for such Additional Replacement. If Lender reasonably determines that (i) such Additional Replacement is of the type intended to be covered by the Replacement Reserve Account, (ii) costs for such Additional Replacement are reasonable, (iii) the funds in the Replacement Reserve Account are sufficient to pay for such Additional Replacement and all other Replacements for the Property specified in the Property Condition Report, and (iv) all other conditions for disbursement under this Agreement have been met, Lender shall disburse funds from the Replacement Reserve Account.

(h) Lender’s disbursement of any Reserve Funds or other acknowledgment of completion of any Required Work in a manner satisfactory to Lender shall not be deemed a certification or warranty by Lender to any Person that the Required Work has been completed in accordance with Legal Requirements.

(i) If the funds in any Reserve Account should exceed the amount of payments actually applied by Lender for the purposes of the account, Lender in its sole discretion shall either return any excess to Borrower or credit such excess against future payments to be made to that Reserve Account. If at any time Lender reasonably determines that the Reserve Funds are not or will not be sufficient to make the required payments, Lender shall notify Borrower of such determination and Borrower shall pay to Lender any amount necessary to make up the deficiency within ten (10) days after notice from Lender to Borrower requesting payment thereof.

(j) The insufficiency of any balance in any of the Reserve Accounts shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

(k) Intentionally Omitted.

(l) Upon payment in full of the Debt, all amounts remaining on deposit, if any, in the Replacement Reserve Account shall be returned to Borrower or the Person shown on Lender’s records as being the owner of the Property and no other party shall have any right or claim thereto.

(m) Upon the payment in full of the Debt, all amounts remaining on deposit, if any, in the Reserve Account shall be returned to Borrower or the Person shown on Lender’s records as being the owner of the Property and no other party shall have any right or claim thereto.

Section 9.6. Tax and Insurance Reserve Funds

(a) Subject to sub-section (b) below, Borrower shall upon Lender’s request establish an Eligible Account with Lender or Lender’s agent sufficient to discharge Borrower’s obligations for the payment of Taxes and Insurance Premiums pursuant to Section 5.4 and Section 8.1 hereof (the “**Tax and Insurance Reserve Account**”). Borrower shall deposit into the Tax and Insurance Reserve Account on each Scheduled Payment Date (a) one-twelfth of the

Taxes that Lender estimates will be payable during the next ensuing twelve (12) months or such higher amount necessary to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to the earlier of (i) the date that the same will become delinquent and (ii) the date that additional charges or interest will accrue due to the non-payment thereof, and (b) except to the extent Lender has waived in writing the insurance escrow because the insurance required hereunder is maintained under a blanket insurance Policy acceptable to Lender in accordance with Section 8.1(c), one-twelfth of the Insurance Premiums that Lender estimates will be payable during the next ensuing twelve (12) months for the renewal of the coverage afforded by the Policies upon the expiration thereof or such higher amount necessary to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the “**Tax and Insurance Reserve Funds**”). Lender will apply the Tax and Insurance Reserve Funds to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.4 and Section 8.1 hereof. In making any disbursement from the Tax and Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office or tax lien service (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Reserve Funds shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.4 and Section 8.1 hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Reserve Account. In allocating any such excess, Lender may deal with the person shown on Lender’s records as being the owner of the Property. Any amount remaining in the Tax and Insurance Reserve Account after the Debt has been paid in full shall be returned to Borrower or the person shown on Lender’s records as being the owner of the Property and no other party shall have any right or claim thereto. If at any time Lender reasonably determines that the Tax and Insurance Reserve Funds are not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall pay to Lender any amount necessary to make up the deficiency within ten (10) days after notice from Lender to Borrower requesting payment thereof.

(b) Notwithstanding anything to contrary contained in this Agreement or any other Loan Document, provided that the applicable Tenant is fulfilling their obligation to pay Taxes and maintain insurance pursuant to the applicable Lease, any requirements herein with respect to Borrower being obligated to make any monthly deposits into the Tax and Insurance Reserve Account shall be waived. Borrower shall, to the extent entitled to receive proof of payment of Taxes and/or maintenance of insurance from the Tenants pursuant to the Leases, shall provide the same to Lender. Borrower agrees that it will request proof of such payment of Taxes and/or maintenance of insurance from the Tenants, in each case to the extent Borrower is permitted to do so under the Leases. Notwithstanding the above, to the extent a Tenant is not obligated to provide proof of payment of Taxes, Borrower shall be obligated to provide Lender proof of payment of Taxes.

Section 9.7. Excess Cash; Operating Expenses; Extraordinary Expenses

(a) Borrower shall establish on the date hereof an Eligible Account with Lender or Lender's agent into which Borrower shall deposit all Excess Cash on each Scheduled Payment Date during the continuation of a Cash Sweep Period (the "**Excess Cash Reserve Account**") to be held by Lender as additional security for the Loan. Amounts so deposited shall hereinafter be referred to as the "**Excess Cash Reserve Funds**." Provided no Event of Default has occurred and is continuing, all sums on deposit in the Excess Cash Reserve Account shall be disbursed to Borrower's Account upon the earlier to occur of (a) payment in full of the Debt or (b) the discontinuation of a Cash Sweep Period.

(b) During the continuation of a Cash Sweep Period, Borrower shall submit to Lender not later than the twentieth (20th) day of each calendar month, a statement certified by Borrower in the form reasonably required by Lender (i) setting forth those Operating Expenses and Extraordinary Expenses to be paid by Borrower during the following calendar month, (ii) stating that no Operating Expenses or Extraordinary Expenses are more than sixty (60) days past due or setting forth anything to the contrary. Together with each such request, Borrower shall furnish Lender with bills and all other documents necessary for the payment of the Operating Expenses and/or Extraordinary Expenses which are the subject of such request. Only those Operating Expenses which are consistent with the Annual Budget, as well as those Operating Expenses and Extraordinary Expenses otherwise approved by Lender in writing in its reasonable discretion, shall be approved for payment and shall be disbursed to the Borrower's Account on the next Scheduled Payment Date.

Section 9.8. Reserve Funds Generally

(a) No earnings or interest on the Reserve Funds shall be payable to Borrower. Neither Lender nor any loan servicer that at any time holds or maintains the Reserve Accounts shall have any obligation to keep or maintain such Reserve Accounts or any funds deposited therein in interest-bearing accounts. If Lender or any such loan servicer elects in its sole and absolute discretion to keep or maintain any Reserve Account or any funds deposited therein in an interest-bearing account, (i) such funds shall not be invested except in Permitted Investments, and (ii) all interest earned or accrued thereon shall be for the account of and be retained by Lender or such loan servicer.

(b) Borrower grants to Lender a first-priority perfected security interest in, and assigns and pledges to Lender, each of the Reserve Accounts and any and all Reserve Funds now or hereafter deposited in the Reserve Accounts as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Accounts and the Reserve Funds shall constitute additional security for the Debt. The provisions of this Section 9.8 are intended to give Lender or any subsequent holder of the Loan "control" of the Reserve Accounts within the meaning of the UCC.

(c) The Reserve Accounts and any and all Reserve Funds now or hereafter deposited in the Reserve Accounts shall be subject to the exclusive dominion and control of Lender, which shall hold the Reserve Accounts and any or all Reserve Funds now or hereafter deposited in the Reserve Accounts subject to the terms and conditions of this Agreement. Borrower shall have no

right of withdrawal from the Reserve Accounts or any other right or power with respect to the Reserve Accounts or any or all of the Reserve Funds now or hereafter deposited in the Reserve Accounts, except as expressly provided in this Agreement.

(d) Lender shall furnish or cause to be furnished to Borrower, without charge, an annual accounting of each Reserve Account in the normal format of Lender or its loan servicer, showing credits and debits to such Reserve Account and the purpose for which each debit to each Reserve Account was made.

(e) As long as no Event of Default has occurred, Lender shall make disbursements from the Reserve Accounts in accordance with this Agreement. All such disbursements shall be deemed to have been expressly pre-authorized by Borrower, and shall not be deemed to constitute the exercise by Lender of any remedies against Borrower unless an Event of Default has occurred and is continuing and Lender has expressly stated in writing its intent to proceed to exercise its remedies as a secured party, pledgee or lienholder with respect to the Reserve Accounts.

(f) If any Event of Default occurs, Borrower shall immediately lose all of its rights to receive disbursements from the Reserve Accounts until the earlier to occur of (i) the date on which such Event of Default is cured to Lender's satisfaction, or (ii) the payment in full of the Debt. Upon the occurrence of any Event of Default, Lender may exercise any or all of its rights and remedies as a secured party, pledgee and lienholder with respect to the Reserve Accounts. Without limitation of the foregoing, upon any Event of Default, Lender may use and disburse the Reserve Funds (or any portion thereof) for any of the following purposes: (A) repayment of the Debt, including, but not limited to, principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); (B) reimbursement of Lender for all losses, fees, costs and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default; (C) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Loan Documents; (D) payment of any item from any of the Reserve Accounts as required or permitted under this Agreement; or (E) any other purpose permitted by applicable law; provided, however, that any such application of funds shall not cure or be deemed to cure any Event of Default. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender's rights and remedies as a secured party with respect to the Reserve Funds and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Reserve Funds to effect a cure of any Event of Default, or to pay the Debt, or in any specific order of priority. The exercise of any or all of Lender's rights and remedies under this Agreement or under any of the other Loan Documents shall not in any way prejudice or affect Lender's right to initiate and complete a foreclosure under the Mortgage.

(g) The Reserve Funds shall not constitute escrow or trust funds and may be commingled with other monies held by Lender. Notwithstanding anything else herein to the contrary, Lender may commingle in one or more Eligible Accounts any and all funds controlled by Lender, including, without limitation, funds pledged in favor of Lender by other borrowers, whether for the same purposes as the Reserve Accounts or otherwise. Without limiting any other

provisions of this Agreement or any other Loan Document, the Reserve Accounts may be established and held in such name or names as Lender or its loan servicer, as agent for Lender, shall deem appropriate, including, without limitation, in the name of Lender or such loan servicer as agent for Lender. In the case of any Reserve Account which is held in a commingled account, Lender or its loan servicer, as applicable, shall maintain records sufficient to enable it to determine at all times which portion of such account is related to the Loan. The Reserve Accounts are solely for the protection of Lender. With respect to the Reserve Accounts, Lender shall have no responsibility beyond the allowance of due credit for the sums actually received by Lender or beyond the reimbursement or payment of the costs and expenses for which such accounts were established in accordance with their terms. Upon assignment of the Loan by Lender, any Reserve Funds shall be turned over to the assignee and any responsibility of Lender as assignor shall terminate. The requirements of this Agreement concerning the Reserve Accounts in no way supersede, limit or waive any other rights or obligations of the parties under any of the Loan Documents or under applicable law.

(h) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Reserve Accounts or the Reserve Funds deposited therein or permit any Lien to attach thereto, except for the security interest granted in this Section 9.8, or any levy to be made thereon, or any UCC Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(i) Borrower will maintain the security interest created by this Section 9.8 as a first priority perfected security interest and will defend the right, title and interest of Lender in and to the Reserve Accounts and the Reserve Funds against the claims and demands of all Persons whomsoever. At any time and from time to time, upon the written request of Lender, and at the sole expense of Borrower, Borrower will promptly and duly execute and deliver such further instruments and documents and will take such further actions as Lender reasonably may request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

(j) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by Lender to be genuine, and it may be assumed conclusively that any Person purporting to give any of the foregoing in connection with the Reserve Account's has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by them hereunder and in good faith in accordance therewith. Lender shall not be liable to Borrower for any act or omission done or omitted to be done by Lender in reliance upon any instruction, direction or certification received by Lender and without gross negligence or willful misconduct.

(k) Beyond the exercise of reasonable care in the custody thereof, Lender shall not have any duty as to any Reserve Funds in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. In no event shall Lender or its Affiliates, agents, employees or bailees, be liable or responsible for any loss or damage to any of the Reserve Funds, or for any diminution in value thereof, by reason of the act or omission of Lender, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct or intentional nonperformance by Lender of its obligations under this Agreement.

**ARTICLE 10
CASH MANAGEMENT**

Section 10.1. Lockbox Account and Cash Management Account

(a) Borrower acknowledges and confirms that Borrower has established, and Borrower covenants that it shall maintain, pursuant to the Lockbox Agreement, non-interest bearing Eligible Accounts into which Borrower shall, and shall cause Manager to, deposit or cause to be deposited, all Rents and other revenue from the Property (such accounts, all funds at any time on deposit therein and any proceeds, replacements or substitutions of such account or funds therein, are collectively referred to herein as the “**Lockbox Account**”). In the event Lockbox Bank ceases to qualify as an Eligible Institution, Borrower shall cooperate with Lender in designating a successor financial institution that meets such qualifications and is otherwise acceptable to Lender and transferring the Lockbox Account to such institution, each within thirty (30) days after request by Lender. In the event Borrower fails to do so, Lender shall have the right, and Borrower hereby grants to Lender a power of attorney (which power of attorney shall be coupled with an interest and irrevocable so long as any portion of the Debt remains outstanding), to designate a successor institution to serve as Lockbox Bank.

(b) Prior to the occurrence of a Cash Sweep Period or Event of Default the balance in the Lockbox Account will be transferred to the Borrower’s Account pursuant to the Lockbox Agreement. After the occurrence of Cash Sweep Period or Event of Default, Lender shall establish a non-interest bearing Eligible Account into which funds in the Lockbox Account shall be transferred pursuant to the terms of Section 10.2(b) hereof (such account, the sub-accounts thereof, all funds at any time on deposit therein and any proceeds, replacements or substitutions of such account or funds therein, are collectively referred to herein as the “**Cash Management Account**”). The following subaccounts of the Cash Management Account shall be established and maintained on a ledger-entry basis:

(i) If applicable and solely to the extent Tenants are obligated pursuant to the applicable Leases and have not satisfied such obligation, a subaccount into which amounts required to be deposited into the Tax and Insurance Reserve Account pursuant to Section 9.6 hereof (the “**Tax and Insurance Reserve Subaccount**”) shall be allocated;

(ii) A subaccount into which amounts required to be paid by Borrower pursuant to Lockbox Bank or Lender pursuant to Section 10.1(e) hereof (the “**Account Maintenance Subaccount**”) shall be allocated;

(iii) A subaccount into which the Monthly Payment Amount and other amounts required to be paid to Lender pursuant to the Note, this Agreement and the other Loan Documents (the “**Debt Service Subaccount**”) shall be allocated;

(iv) If applicable and solely to the extent Tenants are obligated pursuant to the applicable Leases and have not satisfied their obligation, a subaccount into which amounts required to be deposited into the Replacement Reserve Account pursuant to Section 9.2 hereof (the “**Replacement Reserve Subaccount**”) shall be allocated;

(v) Intentionally omitted

(vi) A subaccount into which amounts required to be paid to Borrower for Operating Expenses pursuant to Section 9.7(b) hereof (the “**Operating Expense Subaccount**”) shall be allocated;

(vii) A subaccount into which amounts required to be paid to Borrower for Extraordinary Expenses pursuant to Section 9.7(b) hereof (the “**Extraordinary Expense Subaccount**”) shall be allocated;

(viii) A subaccount into which all Excess Cash required to be deposited into the Excess Cash Reserve Account pursuant to Section 9.7(a) hereof (the “**Excess Cash Subaccount**”) shall be allocated; and

(ix) A subaccount into which all amounts required to be paid to Borrower after application of all disbursements required pursuant to Section 10.2(c) hereof (the “**Borrower Subaccount**”) shall be allocated.

(c) The Lockbox Account and Cash Management Account shall each be in the name of Borrower for the benefit of Lender, provided that Borrower shall be the owner of all funds on deposit in such accounts for federal and applicable state and local tax purposes. Sums on deposit in the Cash Management Account shall not be invested except in such Permitted Investments as determined and directed by Lender and all income earned thereon shall be the income of Borrower and be applied to and become part of the Cash Management Account, to be disbursed in accordance with this Article 10. Neither Lockbox Bank nor Lender shall have any liability for any loss resulting from the investment of funds in Permitted Investments in accordance with the terms and conditions of this Agreement.

(d) The Lockbox Account and Cash Management Account shall be subject to the exclusive dominion and control of Lender and, except as otherwise expressly provided herein, neither Borrower, Manager nor any other party claiming on behalf of, or through, Borrower or Manager, shall have any right of withdrawal therefrom or any other right or power with respect thereto.

(e) Borrower agrees to pay the reasonable and customary fees, expenses and charges (which fees, expenses and charges shall be subject to change from time to time) of (i) Lockbox Bank in connection with administering and maintaining the Lockbox Account and processing all items for payment therefrom, and (ii) Lender in connection with administering and maintaining the Cash Management Account and processing all distributions therefrom, which shall not exceed \$500 per month.

(f) Lender shall be responsible for the performance only of such duties with respect to the Cash Management Account as are specifically set forth herein, and no duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect

hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender and its directors, employees, officers and agents harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such parties in connection with the Cash Management Account other than such as result from the gross negligence or willful misconduct of Lender or intentional nonperformance by Lender of its obligations under this Agreement.

Section 10.2. Deposits and Withdrawals

(a) Borrower represents, warrants and covenants that:

(i) Concurrently with the execution of this Agreement, Borrower shall notify and advise each Tenant under each Lease in effect as of the date hereof and Borrower shall notify and advise each Tenant under any Lease executed after the date hereof to send directly to the Lockbox all payments of Rents or any other item payable under such Leases pursuant to an instruction letter in the form of Exhibit B attached hereto (a "**Tenant Direction Letter**"). If Borrower fails to provide any such notice (and without prejudice to Lender's rights with respect to such default), Lender shall have the right, and Borrower hereby grants to Lender a power of attorney (which power of attorney shall be coupled with an interest and irrevocable so long as any portion of the Debt remains outstanding), to sign and deliver a Tenant Direction Letter;

(ii) Borrower shall, and shall cause Manager to, instruct all Persons that maintain open accounts with Borrower or Manager with respect to the Property or with whom Borrower or Manager does business on an "accounts receivable" basis with respect to the Property to deliver all payments due under such accounts to the Lockbox. Neither Borrower nor Manager shall direct any such Person to make payments due under such accounts in any other manner;

(iii) All Rents or other income from the Property shall (A) be deemed additional security for payment of the Debt and shall be held in trust for the benefit, and as the property, of Lender, (B) not be commingled with any other funds or property of Borrower or Manager, and (C) if received by Borrower or Manager notwithstanding the delivery of a Tenant Direction Letter, be deposited in the Lockbox Account within one (1) Business Day of receipt;

(iv) Without the prior written consent of Lender, so long as any portion of the Debt remains outstanding, neither Borrower nor Manager shall terminate, amend, revoke or modify any Tenant Direction Letter in any manner whatsoever or direct or cause any Tenant to pay any amount in any manner other than as provided in the related Tenant Direction Letter; and

(v) So long as any portion of the Debt remains outstanding, neither Borrower, Manager nor any other Person shall open or maintain any accounts other than the Lockbox Account into which revenues from the ownership and operation of the Property are deposited. The foregoing shall not prohibit Borrower from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to Borrower pursuant to the express terms of this Agreement.

(b) Borrower hereby irrevocably authorizes Lender to , upon the commencement of a Cash Sweep Period, instruct Lockbox Bank to transfer, or cause to be transferred, on each Business Day by wire transfer or other method of transfer mutually agreeable to Lockbox Bank and Lender of immediately available funds, all collected and available balances in the Lockbox Account (subject to any minimum retained or “peg” balance that may be required pursuant to the terms of the Lockbox Agreement) to the Cash Management Account to be held until disbursed by Lender pursuant to Section 10.2(d). Subject to Section 10.2(a) above, if a Cash Sweep Period ceases to exist, pursuant to the Lockbox Agreement, all collected and available balances in funds the Lockbox Account (subject to any minimum retained or “peg” balance that may be required pursuant to the terms of the Lockbox Agreement) in the Lockbox Account shall be transferred on each Business Day to Borrower’s Account, to be held and disbursed at Borrower’s sole discretion, unless a Cash Sweep Period once again exists, in which case such funds in the Lockbox Account shall be transferred on each Business Day to the Cash Management Account. Upon the cessation of a Cash Sweep Period, unless an Event of Default has occurred and is continuing, Lender shall provide written notice to the Lockbox Bank directing it to remit the then balance in the Cash Management Account to Borrower’s Account.

(c) Provided no Event of Default shall have occurred and be continuing, on or before each Scheduled Payment Date occurring on or after the commencement of a Cash Sweep Period, Lender shall apply all funds on deposit in the Cash Management Account to the following subaccounts of the Cash Management Account in the following amounts and order of priority:

(i) First, to the Tax and Insurance Reserve Subaccount (if applicable and solely to the extent Tenants are not obligated pursuant to the applicable Leases and have satisfied such obligation), in an amount up to the monthly deposit to the Tax and Insurance Reserve Account due on the next Scheduled Payment Date;

(ii) Second, to the Account Maintenance Subaccount, up to the amount due and payable by Borrower to Lockbox Bank or Lender pursuant to Section 10.1(e) hereof;

(iii) Third, to the Debt Service Subaccount, in an amount up to the Monthly Payment Amount due on the next Scheduled Payment Date;

(iv) Fourth, to the Replacement Reserve Subaccount (if applicable and solely to the extent Tenants are obligated pursuant to the applicable Leases and have not satisfied such obligation), in an amount up to the Replacement Reserve Monthly Deposit due on the next Scheduled Payment Date;

(v) Intentionally omitted.

(vi) Sixth, to the Debt Service Subaccount, in an amount up to any interest accruing at the Default Rate, late payment charges, and any other sums due and payable to Lender under the Note, this Agreement or the other Loan Documents;

(vii) Seventh, during the continuation of a Cash Sweep Period, to the Operating Expense Subaccount, up to the amount approved pursuant to Section 9.7(b) for disbursement to Borrower for Operating Expenses on the next Scheduled Payment Date;

(viii) Eighth, during the continuation of a Cash Sweep Period, to the Extraordinary Expense Subaccount, up to the amount approved pursuant to Section 9.7(b) for disbursement to Borrower for Extraordinary Expenses on the next Scheduled Payment Date; and

(ix) Ninth, during the continuation of a Cash Sweep Period, to the Excess Cash Subaccount, otherwise to the Borrower Subaccount, all amounts remaining in the Cash Management Account after all prior allocations under this Section 10.2(c) (the “**Excess Cash**”).

(d) During a Cash Sweep Period, provided no Event of Default shall have occurred and be continuing, on each Scheduled Payment Date (and if such day is not a Business Day, then the immediately preceding day which is a Business Day) commencing the month during which the first Scheduled Payment Date occurs, Borrower hereby irrevocably authorizes Lender to withdraw all funds on deposit in the Cash Management Account and disburse such funds as follows:

(i) Funds on deposit in the Tax and Insurance Reserve Subaccount (if applicable and solely to the extent Tenants are not obligated pursuant to the applicable Leases and have satisfied such obligation), to Lender for deposit into the Tax and Insurance Reserve Account to be held and disbursed in accordance with Section 9.6;

(ii) Funds on deposit in the Account Maintenance Subaccount, to Lockbox Bank or Lender, as applicable, for amounts payable pursuant to Section 10.1(e)

(iii) Funds on deposit in the Debt Service Subaccount, to Lender for payment of the Monthly Payment Amount due on such Scheduled Payment Date together with any interest accruing at the Default Rate, late payment charges, and any other sums due and payable to Lender under the Note, this Agreement or the other Loan Documents;

(iv) Funds on deposit in the Replacement Reserve Subaccount (if applicable and solely to the extent Tenants are obligated pursuant to the applicable Leases and have not satisfied such obligation), to Lender for deposit into the Replacement Reserve Account to be held and disbursed in accordance with Section 9.5;

(v) Intentionally omitted.

(vi) During the continuation of a Cash Sweep Period, funds on deposit in the Operating Expense Subaccount, to Borrower’s Account for payment of Operating Expenses for such month pursuant to Section 9.7(b);

(vii) During the continuation of a Cash Sweep Period, funds on deposit in the Extraordinary Expense Subaccount, to Borrower’s Account for payment of Extraordinary Expenses for such month pursuant to Section 9.7(b);

(viii) During the continuation of a Cash Sweep Period, funds on deposit in the Excess Cash Subaccount, to Lender for deposit into the Excess Cash Reserve Account to be held and disbursed in accordance with Section 9.7(a); and

(ix) Funds on deposit in the Borrower Subaccount, to Borrower's Account.

(e) Notwithstanding anything to the contrary herein, Borrower acknowledges that Borrower is responsible for monitoring the sufficiency of funds deposited in the Cash Management Account and that Borrower is liable for any deficiency in available funds, irrespective of whether Borrower has received any account statement, notice or demand from Lender or Lender's servicer. If the amount on deposit in the Cash Management Account is insufficient to allocate the full amounts required pursuant to Section 10.2(c)(i) through (vi) above, Borrower shall deposit such deficiency into the Cash Management Account within five (5) days after notice (provided that such five day period shall not constitute a grace period for any default or Event of Default under this Agreement or any other Loan Document based on a failure to satisfy any monetary obligation provided in any Loan Document).

(f) If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably authorizes Lender to make any and all withdrawals from the Lockbox Account and Cash Management Account and transfers between any of the Reserve Accounts as Lender shall determine in Lender's sole and absolute discretion and Lender may use all funds contained in any such accounts for any purpose, including but not limited to repayment of the Debt in such order, proportion and priority as Lender may determine in its sole and absolute discretion. Lender's right to withdraw and apply funds as stated herein shall be in addition to all other rights and remedies provided to Lender under this Agreement, the Note, the Mortgage and the other Loan Documents.

Section 10.3. Security Interest

(a) To secure the full and punctual payment of the Debt and performance of all obligations of Borrower now or hereafter existing under this Agreement and the other Loan Documents, Borrower hereby grants to Lender a first-priority perfected security interest in the Lockbox Account and Cash Management Account, all interest, cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held therein, any and all amounts invested in Permitted Investments, and all "proceeds" (as defined in the UCC as in effect in the state in which the Lockbox Account and Cash Management Account are located or maintained) of any or all of the foregoing. Furthermore, Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any of the foregoing or permit any Lien to attach thereto or any levy to be made thereon or any UCC Financing Statements to be filed with respect thereto. Borrower will maintain the security interest created by this Section 10.3(a) as a first priority perfected security interest and will defend the right, title and interest of Lender in and to the Lockbox Account and Cash Management Account against the claims and demands of all Persons whomsoever.

(b) Borrower authorizes Lender to file any financing statement or statements required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein in connection with the Lockbox Account and Cash Management Account.

Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly and duly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby (including, without limitation, any security interest in and to any Permitted Investments) or to enable Lender to exercise and enforce its rights and remedies hereunder.

(c) Upon the occurrence of an Event of Default, Lender may exercise any or all of its rights and remedies as a secured party, pledgee and lienholder with respect to the Lockbox Account and Cash Management Account. Without limitation of the foregoing, upon any Event of Default, Lender may use the Lockbox Account and Cash Management Account for any of the following purposes: (A) repayment of the Debt, including, but not limited to, principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); (B) reimbursement of Lender for all losses, fees, costs and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default; (C) payment of any amount expended in exercising any or all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Loan Documents; (D) payment of any item as required or permitted under this Agreement; or (E) any other purpose permitted by applicable law; provided, however, that any such application of funds shall not cure or be deemed to cure any Event of Default. Without limiting any other provisions hereof, each of the remedial actions described in the immediately preceding sentence shall be deemed to be a commercially reasonable exercise of Lender's rights and remedies as a secured party with respect to the Lockbox Account and Cash Management Account and shall not in any event be deemed to constitute a setoff or a foreclosure of a statutory banker's lien. Nothing in this Agreement shall obligate Lender to apply all or any portion of the Lockbox Account or Cash Management Account to effect a cure of any Event of Default, or to pay the Debt, or in any specific order of priority. The exercise of any or all of Lender's rights and remedies under this Agreement or under any of the other Loan Documents shall not in any way prejudice or affect Lender's right to initiate and complete a foreclosure under the Mortgage.

(d) Notwithstanding anything to the contrary contained herein, for purposes of this Article 10 only, "Business Day" shall mean a day on which Lender and Lockbox Bank are both open for the conduct of substantially all of their respective banking business at the office in the city in which the Note is payable, with respect to Lender, and at the office in the city where the Lockbox Account is maintained, with respect to Lockbox Bank (in both instances, excluding Saturdays and Sundays).

Section 10.4. Reimbursement from Tenant

Notwithstanding anything to the contrary contained herein to the extent Borrower makes any payment with respect to any obligations of any Tenant under any Lease (including payments with respect to any Taxes or Insurance Premiums) and seeks reimbursement of such payment from the applicable Tenant, such reimbursement shall be paid by such Tenant directly to the Borrower Account and Lender shall have no right, claim or interest in or with respect to any such amounts.

ARTICLE 11
EVENTS OF DEFAULT; REMEDIES

Section 11.1. Event of Default

The occurrence of any one or more of the following events shall constitute an “**Event of Default**”:

- (a) if any portion of the Debt is not paid prior to the fifth (5th) day following the date the same is due or if the entire Debt is not paid on or before the Maturity Date;
- (b) except as otherwise expressly provided in the Loan Documents, if any of the Taxes or Other Charges are not paid when the same are due and payable, in accordance with Section 5.4, unless there is sufficient money in the Tax and Insurance Reserve Account for payment of amounts then due and payable and Lender’s access to such money has not been constrained or restricted in any manner, provided;
- (c) if the Policies are not kept in full force and effect as required pursuant to Section 8.1;
- (d) if Borrower breaches any material covenant with respect to itself or SPE Component Entity contained in Article 6 or any material covenant contained in Article 7 hereof; provided, however, that if Lender reasonably determines that such breach of covenant contained in Article 6 (i) was not made in bad faith, (ii) is capable of being cured, (iii) does not have a material adverse effect on Borrower, SPE Component Entity or the Property and (iv) Lender would not be prejudiced by permitting Borrower to cure the same, which prejudice shall not include the ability to enforce rights and remedies based upon an Event of Default being cured, Borrower shall have thirty (30) days after written notice thereof to cure such misrepresentation or breach of warranty before it becomes an Event of Default hereunder;
- (e) if any representation or warranty of, or with respect to, Borrower, Borrower Principal, or SPE Component Entity, in any other Loan Document, or in any certificate, report, financial statement or other instrument or document furnished to Lender at the time of the closing of the Loan or during the term of the Loan shall have been false or misleading in any material respect when made; provided, however, that if Lender reasonably determines that such misrepresentation or breach of warranty (i) was not made in bad faith, (ii) is capable of being cured, (iii) does not have a material adverse effect on Borrower, SPE Component Entity, or the Property, and (iv) Lender would not be prejudiced by permitting Borrower to cure the same, which prejudice shall not include the ability to enforce rights and remedies based upon an Event of Default being cured, Borrower shall have thirty (30) days after written notice thereof to cure such misrepresentation or breach of warranty before it becomes an Event of Default hereunder;
- (f) if (i) Borrower, or any managing member of Borrower, Borrower Principal, or SPE Component Entity shall commence any case, proceeding or other action (A) under any Creditors Rights Laws, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower, any managing member of Borrower, Borrower Principal, or SPE

Component Entity shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower, any managing member of Borrower, Borrower Principal, or SPE Component Entity any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there shall be commenced against Borrower, any managing member or general partner of Borrower, Borrower Principal, or any SPE Component Entity (if any) any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) Borrower, any managing member or general partner of Borrower, Borrower Principal, or any SPE Component Entity (if any) shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above, which result in the actual commencement of any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower, any managing member of Borrower, Borrower Principal, or SPE Component Entity shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) if Borrower shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to the Mortgage;

(h) if the Property becomes subject to any mechanic's, materialman's or other Lien other than a Lien for any Taxes or Other Charges not yet delinquent and the Lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days of Borrower's knowledge thereof;

(i) if any federal tax lien is filed against Borrower, any member of Borrower, or SPE Component Entity or the Property and same is not discharged of record within thirty (30) days after same is filed;

(j) a final non-appealable judgment against any individual Borrower in excess of \$100,000 which is not vacated or discharged within thirty (30) days;

(k) if any default occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any;

(l) if Borrower shall permit any event within its control to occur that would cause any REA to terminate without notice or action by any party thereto or would entitle any party to terminate any REA and the term thereof by giving notice to Borrower in accordance with the terms of the applicable REA; or any REA shall be surrendered, terminated or canceled for any reason or under any circumstance whatsoever by Borrower except as provided for in such REA; or any material term of any REA shall be modified or supplemented without Lender's prior written consent; or Borrower shall fail, within ten (10) Business Days after demand by Lender, to exercise its option to renew or extend the term of any REA or shall fail or neglect to pursue diligently all actions necessary to exercise such renewal rights pursuant to such REA except as provided for in such REA; or

(m) if Borrower shall continue to be in default under any other term, covenant or condition of this Agreement or any of the other Loan Documents for more than ten (10) Business Days after notice from Lender in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days.

Section 11.2. Remedies

(a) Upon the occurrence of an Event of Default (other than an Event of Default described in Section 11.1(f) above) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in Section 11.1(f) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

(b) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents.

ARTICLE 12
ENVIRONMENTAL PROVISIONS

Section 12.1. Environmental Representations and Warranties

Subject to the provisions of the applicable Lease and Tenant's rights and obligations thereunder, Borrower represents and warrants, based upon an Environmental Report of the Property and to Borrower's knowledge, that: (a) there are no Hazardous Materials or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws and with permits issued pursuant thereto (if such permits are required), if any, and (ii) either (A) in the case of Hazardous Materials, in amounts not in excess of that necessary to operate the Property for the purposes set forth herein or (B) fully disclosed to and approved by Lender in writing pursuant to an Environmental Report; (b) there are no past, present or threatened Releases of Hazardous Materials in violation of any Environmental Law or which would require remediation by a Governmental Authority in, on, under or from the Property except as described in the Environmental Report; (c) there is no pending threat of any Release of Hazardous Materials migrating to the Property except as described in the Environmental Report; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Report; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person relating to Hazardous Materials in, on, under or from the Property; (f) the Property is free of Mold; and (g) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property known to Borrower or contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Materials in, on, under or migrating to or from the Property and/or to the environmental condition of or the presence of Mold at the Property.

Section 12.2. Environmental Covenants

Subject to the provisions of the applicable Lease and Tenant's rights and obligations thereunder, Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Materials in, on, under or from the Property; (c) there shall be no Hazardous Materials in, on, or under the Property, except those that are both (i) in compliance in all material respects with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required, and (ii) (A) in amounts not in excess of that necessary to operate the Property for the purposes set forth herein or (B) fully disclosed to and approved by Lender in writing or (C) set forth in the Environment Report material or (D) with respect to Mold, not in a condition, location, or of a type which is likely to pose a risk to human health or safety or the environment or which is likely to adversely affect or impair the value or marketability of the Property; (d) Borrower shall keep the Property free and clear of all Environmental Liens; (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.4 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense,

perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender, upon Lender's reasonable belief that the Property is not in full compliance with all Environmental Laws, and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (g) Borrower shall keep the Property free of Mold in order to comply with Section 12.2.(a)(ii)(D); (h) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Property; and (ii) comply with any Environmental Law; (i) Borrower shall not allow any tenant or other user of the Property to violate any Environmental Law; and (j) Borrower shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Release of Hazardous Materials in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien against the Property; (D) any required or proposed remediation of environmental conditions relating to the Property; and (E) any written notice or communication of which Borrower becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials. Notwithstanding anything to the contrary contained herein, Borrower's obligations to remediate or take other actions on the Property under this Section are subject to any restrictions on the Property owner to take such actions contained in the applicable Leases. To the extent the obligations of Borrower to remediate or take other actions on the Property set forth in this Section are the responsibility of Tenant pursuant to the applicable Lease, Borrower shall be deemed to be in compliance with this Section so long as Borrower is asserting its rights and is using commercially reasonable efforts to enforce Tenant's obligations under the applicable Lease including, without limitation, the exercise of remedies available under the applicable Lease; provided, however, that the foregoing shall in no way limit Borrower's obligations to Lender under this Section and the other Loan Documents.

Section 12.3. Lender's Rights

Upon reasonable advance written notice, which notice shall include a reasonably detailed description of Lender's reasons for such determination, Lender and any other Person designated by Lender, including but not limited to any representative of a Governmental Authority, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide reasonable access to Lender and any such person or entity designated by Lender.

Section 12.4. Operations and Maintenance

If recommended by the Environmental Report or any other environmental assessment or audit of the Property, Borrower shall establish and comply with an operations and maintenance program with respect to the Property, in form and substance reasonably acceptable to Lender, prepared by an environmental consultant reasonably acceptable to Lender, which program shall

address any asbestos-containing material or lead based paint or Mold that may now or in the future be detected at or on the Property. Without limiting the generality of the preceding sentence, Lender may reasonably require (a) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (b) an amendment to such operations and maintenance program to address changing circumstances, laws or other matters, (c) at Borrower's sole expense, supplemental examination of the Property by consultants reasonably specified by Lender, (d) access to the Property by Lender, its agents or servicer, to review and assess the environmental condition of the Property and Borrower's compliance with any operations and maintenance program, and (e) variation of the operations and maintenance program in response to the reports provided by any such consultants.

Section 12.5. Environmental Definitions

"Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Property and relate to Hazardous Materials or protection of human health or the environment. **"Environmental Liens"** means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person. **"Environmental Report"** means the written reports resulting from the environmental assessment of the Property, delivered to Lender in connection with the Loan. **"Hazardous Materials"** shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant", "contaminant", or "pollutant" within the meaning of any Environmental Law. **"Mold"** shall mean any mold, fungi, bacterial or microbial matter present at or in the Property, including, without limitation, building materials which is in a condition, location or a type which is likely to pose a risk to human health or safety or the environment, is likely to result in damage to or would adversely affect or impair the value or marketability of the Property. **"Release"** of any Hazardous Materials includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

Section 12.6. Intentionally Omitted

**ARTICLE 13
SECONDARY MARKET**

Section 13.1. Transfer of Loan

Lender may, at any time, sell, transfer or assign the Loan Documents, or grant participations therein (“**Participations**”) or syndicate the Loan (“**Syndication**”) or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (“**Securities**”) (a Syndication or the issuance of Participations and/or Securities, a “**Securitization**”).

Section 13.2. Delegation of Servicing

At the option of Lender, the Loan may be serviced by a servicer/trustee selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to such servicer/trustee pursuant to a servicing agreement between Lender and such servicer/trustee.

Section 13.3. Dissemination of Information

Lender may forward to each purchaser, transferee, assignee, or servicer of, and each participant, or investor in, the Loan, or any Participations and/or Securities or any of their respective successors (collectively, the “**Investor**”) or any Rating Agency rating the Loan, or any Participations and/or Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, any managing member or general partner thereof, Borrower Principal, SPE Component Entity and the Property, including financial statements, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable Legal Requirements to prohibit such disclosure, including but not limited to any right of privacy.

Section 13.4. Cooperation

Borrower and Borrower Principal agree to cooperate with Lender in connection with any sale or transfer of the Loan or any Participation and/or Securities created pursuant to this Article 13, including, without limitation, (a) the delivery of an estoppel certificate required in accordance with Section 5.12(a) and such other documents as may be reasonably requested by Lender, (b) the execution of such amendments to the Loan Documents as may be requested by the holder of the Note or the Rating Agencies or otherwise to effect the Securitization including, without limitation, bifurcation of the Loan into two or more separate notes; provided, however, that Borrower shall not be required to modify or amend any Loan Document or organizational document if such modification or amendment would (i) change the interest rate, the stated maturity or the amortization of principal set forth in the Note, except in connection with a bifurcation of the Loan which may result in varying fixed interest rates and amortization schedules, but which shall have the same initial weighted average coupon of the original Note, or

(ii) modify or amend any other material economic or material non-economic term of the Loan or the Loan Documents, or (iii) materially increase Borrower's obligations and liabilities under the Loan Documents, and (c) make changes to the organizational documents of Borrower and its principals and/or use its commercially reasonable efforts to cause changes to the legal opinions delivered by Borrower in connection with the Loan, provided, that such changes shall not result in a material adverse effect to Borrower. Borrower shall also furnish and Borrower and Borrower Principal consent to Lender furnishing to such Investors or such prospective Investors or such Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower or Borrower Principal as may be reasonably requested by Lender, any Investor, any prospective Investor or any Rating Agency in connection with any sale or transfer of the Loan or any Participations or Securities.

Section 13.5. Intentionally Omitted

Section 13.6. Intentionally Omitted

Section 13.7. Intentionally Omitted

Section 13.8. Intentionally Omitted

**ARTICLE 14
INDEMNIFICATIONS**

Section 14.1. General Indemnification

Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any applicable Legal Requirements; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (f) the holding or investing of the Reserve Accounts or the performance of the Required Work or Additional Replacements, or (g) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

Section 14.2. Mortgage and Intangible Tax Indemnification

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of the Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

Section 14.3. ERISA Indemnification

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Section 4.9 or Section 5.18 of this Agreement.

Section 14.4. Survival

The obligations and liabilities of Borrower under this Article 14 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Mortgage.

**ARTICLE 15
EXCULPATION**

Section 15.1. Exculpation

(a) Except as otherwise provided herein or in the other Loan Documents, Lender shall not enforce the liability and obligation of Borrower or Borrower Principal, as applicable, to perform and observe the obligations contained herein or in the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower or Borrower Principal, except that Lender may bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon this Agreement, the Note, the Mortgage and the other Loan Documents, and the interest in the Property, the Rents and any other collateral given to Lender created by this Agreement, the Note, the Mortgage and the other Loan Documents; provided, however, that any judgment in any such action or proceeding shall be enforceable against Borrower or Borrower Principal, as applicable, only to the extent of Borrower's or Borrower Principal's interest in the Property, in the Rents and in any other collateral given to Lender with respect to this Loan. Lender, by accepting this Agreement, the Note, the Mortgage and the other Loan Documents, agrees that it shall not, except as otherwise provided in this Section 15.1, sue for, seek or demand any deficiency judgment against Borrower or Borrower Principal in any such action or proceeding, under or by reason of or under or in connection with this Agreement, the Note, the Mortgage or the other Loan Documents. The provisions of this Section 15.1 shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Agreement, the Note, the

Mortgage or the other Loan Documents; (ii) impair the right of Lender to name Borrower or Borrower Principal as a party defendant in any action or suit for judicial foreclosure and sale under this Agreement and the Mortgage solely to effectuate such sale or foreclosure; (iii) affect the validity or enforceability of any indemnity (including, without limitation, those contained in the Guaranty, Environmental Indemnity and Article 14 of this Agreement), guaranty, master lease or similar instrument made in connection with this Agreement, the Note, the Mortgage and the other Loan Documents; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the assignment of leases provisions contained in the Mortgage; or (vi) impair the right of Lender to obtain a deficiency judgment or other judgment on the Note against Borrower or Borrower Principal if necessary to obtain any Insurance Proceeds or Awards to which Lender would otherwise be entitled under this Agreement; provided, however, Lender shall only enforce such judgment to the extent of the Insurance Proceeds and/or Awards.

(b) Notwithstanding the provisions of this Section 15.1 to the contrary, Borrower and Borrower Principal by executing the Guaranty shall be personally liable to Lender on a joint and several basis for Losses incurred by Lender (including reasonable attorneys' fees and costs reasonably incurred) arising from and attributable to:

(i) fraud or intentional misrepresentation by Borrower, Borrower Principal or any other Affiliate of Borrower or Borrower Principal in connection with the execution and the delivery of this Agreement, the Note, the Mortgage, any of the other Loan Documents, or any certificate, report, financial statement or other instrument or document furnished to Lender at the time of the closing of the Loan or during the term of the Loan to the extent the same has a material adverse effect on Borrower, Borrower Principal or the Property;

(ii) Borrower's misapplication or misappropriation of Rents received by Borrower after the occurrence of an Event of Default;

(iii) Borrower's misapplication or misappropriation of tenant security deposits or Rents collected in advance;

(iv) the misapplication or the misappropriation of Insurance Proceeds or Awards;

(v) Borrower's failure to pay Taxes, Other Charges (except to the extent that (A) sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms hereof and there exists no impediment to Lender's utilization thereof, (B) there is insufficient cash flow from the operation of the Property or (C) to the extent Borrower is contesting Taxes and or Other Charges in accordance with the terms of this Agreement), charges for labor or materials or other charges that can create liens on the Property beyond any applicable notice and cure periods specified herein;

(vi) Borrower's failure to return or to reimburse Lender for all Personal Property owned by Borrower taken from the Property by or on behalf of Borrower and not replaced with Personal Property of the same utility and of the same or greater value;

(vii) any act of actual waste or arson to any Property by Borrower, or by Borrower Principal, or any Affiliate;

(viii) Borrower's failure following any Event of Default to (A) deliver to Lender upon Lender's written demand all Rents and available books and records required under the Loan Documents relating to the Property and requested by Lender (within a commercially reasonable period of time), or (B) if applicable, comply with all written notices and instructions of Lender delivered pursuant to the terms of the Assignment of Management Agreement (if any) to the extent such notices or instructions do not violate applicable laws or contractual obligations of Borrower;

(ix) Borrower's setting forth of any defense to a proceeding instituted by Lender (whether judicial or otherwise) for the foreclosure of the Mortgage following an Event of Default caused by Borrower's failure to timely pay the Monthly Payment Amount or the Debt due on the Maturity Date;

(x) Intentional breach or any unintentional breach after five (5) days notice by Borrower of any representation, warranty or covenant set forth in Section 10.2 hereof;

(xi) The material breach of any representation, warranty, covenant or indemnification set forth in Article 12 hereof or in any other Loan Document concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in any Loan Document, in each case after any applicable notice and cure period;

(xii) gross negligence or willful misconduct by Borrower, Borrower Principal or any other Affiliate of Borrower or Borrower Principal in connection with the Loan;

(xiii) a breach by Borrower or SPE Component Entity of any of the covenants set forth in Article 6 hereof, to the extent that such breach (A) has a material adverse effect on Borrower and/or SPE Component Entity and (B) is not cured within fifteen (15) days of the earlier to occur of notice from Lender or Borrower's knowledge of such breach; or

(xiv) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary Lien encumbering the Property, if such consent is required by the Loan Documents.

(c) Notwithstanding the foregoing, the agreement of Lender not to pursue recourse liability as set forth in subsection (a) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Debt shall be fully recourse to Borrower and Borrower Principal on a joint and several basis in the event (i) of a breach by Borrower, Borrower Principal or SPE Component Entity of any of the covenants set forth in Article 6 hereof, which breach results in a substantive consolidation of Borrower or SPE Component Entity with any Affiliate in a bankruptcy or similar proceeding (or the filing of a motion for substantive consolidation in bankruptcy citing such failure), (ii) of a breach of any of the covenants set forth in Article 7 hereof, which results in a Prohibited Transfer, (iii) the Property or any part thereof shall become an asset in a voluntary bankruptcy or voluntary insolvency proceeding of Borrower, (iv)

Borrower, Borrower Principal or any Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower or Borrower Principal files, or joins in the filing of, an involuntary petition against Borrower under any Creditors Rights Laws that is not dismissed in its entirety in accordance with applicable Legal Requirements within ninety (90) days of the filing thereof, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person, which results in and involuntary petition being filed against Borrower; (v) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under any Creditors Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; provided, however, that the foregoing shall not be deemed to be violated if Borrower does not take any action contesting or otherwise objecting to such involuntary petition; or (vi) any Affiliate, officer, director, or representative which controls Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property.

(d) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provision of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured by the Mortgage or to require that all collateral shall continue to secure all of the indebtedness owing to Lender in accordance with this Agreement, the Note, the Mortgage or the other Loan Documents.

(e) Subject to the terms of the Environmental Indemnity which survive the payment in full of the Loan, upon payment in full of the Loan, Borrower Principal shall be relieved of its obligations under this Article 15, the Environmental Indemnity and the Guaranty.

ARTICLE 16
NOTICES

Section 16.1. Notices

All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid overnight delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or by (c) telecopier (with answer back acknowledged provided an additional notice is given pursuant to subsection (b) above), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bank of America, N.A.
Real Estate Structured Finance - Servicing
900 West Trade Street
Suite 650
NC1-026-06-01
Charlotte, North Carolina 28255
Attn: Servicing Manager
Telephone No: (866) 531-0957
Facsimile No.: (704) 317-4501

With a copy to: Winstead PC
2400 Hearst Tower
214 North Tryon Street
Charlotte, North Carolina 28202
Attention: Jeffrey J. Lee, Esq.
Telephone No.: (704) 339-1788
Facsimile No.: (704) 339-1701

If to Borrower: c/o Consolidated-Tomoka Land Co.
1530 Cornerstone Blvd
Suite 100
Daytona Beach, FL 32117
Attention: Steven R. Greathouse
Telephone No.: (386) 944-5642
Facsimile No.: (386) 274-1223

With a copy to: c/o Consolidated-Tomoka Land Co.
1530 Cornerstone Blvd
Suite 100
Daytona Beach, FL 32117
Attention: General Counsel
Telephone No.:
Facsimile No.:

If to Borrower Principal: c/o Consolidated-Tomoka Land Co.
1530 Cornerstone Blvd
Suite 100
Daytona Beach, FL 32117
Attention: Steven R. Greathouse
Telephone No.: (386) 944-5642
Facsimile No.: (386) 274-1223

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day.

**ARTICLE 17
FURTHER ASSURANCES**

Section 17.1. Replacement Documents

Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record: (i) with respect to any Loan Document other than the Note, Borrower will issue, in lieu thereof, a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Loan Document in the same principal amount thereof and otherwise of like tenor and (ii) with respect to the Note, (a) Borrower will execute a reaffirmation of the Debt as evidenced by such Note acknowledging that Lender has informed Borrower that the Note was lost, stolen, destroyed or mutilated and that such Debt continues to be an obligation and liability of the Borrower as set forth in the Note, a copy of which shall be attached to such reaffirmation and (b) if requested by Lender, Borrower will execute a replacement note and Lender or Lender's custodian (at Lender's option) shall provide to Borrower Lender's (or Lender's custodian's) then standard form of lost note affidavit and indemnity, which such form shall be reasonably acceptable to Borrower.

Section 17.2. Recording of Mortgage, etc

Borrower forthwith upon the execution and delivery of the Mortgage and thereafter, from time to time, will cause the Mortgage and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Mortgage, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 17.3. Further Acts, etc

Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, security agreements, control agreements, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or

may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording the Mortgage, or for complying with all Legal Requirements. Borrower, within five (5) Business Days of written demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements and financing statement amendments to evidence more effectively, perfect and maintain the priority of the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 17.3.

Section 17.4. Changes in Tax, Debt, Credit and Documentary Stamp Laws

(a) If any law is enacted or adopted or amended after the date of this Agreement which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable without any prepayment penalty or fee.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of the Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable without any prepayment penalty or fee.

If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Mortgage, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 17.5. Expenses

Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable, actual attorneys' fees and disbursements and the allocated costs of internal legal services and all actual disbursements of internal counsel) reasonably incurred by Lender and otherwise payable by Borrower in accordance with this Agreement (all of which shall be deemed part of the Debt) in connection with (a) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters

arising under this Agreement or the other Loan Documents with respect to the Property); (b) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date (unless specified to be paid by Lender), including, without limitation, confirming compliance with environmental and insurance requirements; (c) following a request by Borrower, Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (d) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (e) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (f) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (g) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (h) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender.

Section 17.6. Cost of Enforcement.

In the event (a) that the Mortgage is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, or (c) Lender exercises any of its other remedies under this Agreement or any of the other Loan Documents, Borrower shall be chargeable with and agrees to pay all out-of-pocket costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes, all of which shall be deemed part of the Debt. In addition, Borrower shall be responsible for any fees and expenses of any servicer and any third-party fees and expenses, including, without limitation, special servicing fees, work-out fees and attorneys fees and disbursements in connection with a prepayment, release of the Property, assumption or modification of the Loan, special servicing or work-out of the Loan or enforcement of the Loan Documents.

**ARTICLE 18
WAIVERS**

Section 18.1. Remedies Cumulative; Waivers

The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower or Borrower Principal pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

Section 18.2. Modification, Waiver in Writing

No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 18.3. Delay Not a Waiver

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 18.4. Trial by Jury

BORROWER, BORROWER PRINCIPAL AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH

REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, BORROWER PRINCIPAL AND LENDER, 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 OF LENDER, BORROWER PRINCIPAL AND BORROWER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER, BORROWER PRINCIPAL AND LENDER.

Section 18.5. Waiver of Notice

Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 18.6. Remedies of Borrower

In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, to the fullest extent permitted by applicable law Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and to the fullest extent permitted by applicable law Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Lender agrees that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

Section 18.7. Waiver of Marshalling of Assets

To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 18.8. Waiver of Statute of Limitations

Borrower hereby expressly waives and releases, to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 18.9. Waiver of Counterclaim

Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 18.10. Gradsky Waivers

Borrower and Borrower Principal hereby waive each of the following for the Properties located in the State of California as identified on Schedule I:

(a) Any rights of Borrower Principal of subrogation, reimbursement, indemnification, and/or contribution against Borrower or any other person or entity, and any other rights and defenses that are or may become available to Borrower Principal or any other person or entity by reasons of Sections 2787-2855, inclusive of the California Civil Code;

(b) Any rights or defenses that may be available by reason of any election of remedies by Lender (including, without limitation, any such election which in any manner impairs, effects, reduces, releases, destroys or extinguishes Borrower Principal's subrogation rights, rights to proceed against Borrower for reimbursement, or any other rights of Borrower Principal to proceed against any other person, entity or security, including but not limited to any defense based upon an election of remedies by Lender under the provisions of Section 580(d) of the California Code of Civil Procedure or any similar law of California or of any other State or of the United States); and

(c) Any rights or defenses Borrower Principal may have because its obligations under this Agreement (the "**Borrower Principal Obligations**") are secured by real property or any estate for years. These rights or defenses include, but are not limited to, any rights or defenses that are based upon, directly or indirectly, the application of Section 580(a), Section 580(b), Section 580(d) or Section 726 of the California Code of Civil Procedure to the Borrower Principal Obligations.

The provisions of this subsection (c) mean, among other things:

(y) Lender may collect from Borrower Principal without first foreclosing on any real or personal property collateral pledged by Borrower for the Debt; and

(z) If Lender forecloses on a real property pledged by Borrower:

(1) The Borrower Principal Obligations shall not be reduced by the price for which the collateral sold at the foreclosure sale or the value of the collateral at the time of the sale.

(2) Lender may collect from Borrower Principal even if Lender, by foreclosing on the real property collateral, has destroyed any right of Borrower Principal to collect from Borrower. Further, the provisions of this Agreement constitute an unconditional and irrevocable waiver of any rights and defenses Borrower Principal may have because Borrower's obligations are secured by real property. These rights and defenses, include, but are not limited to, any rights or defenses based upon Section 580(a), Section 580(b), Section 580(d) or Section 726 of the California Code of Civil Procedure.

**ARTICLE 19
GOVERNING LAW**

Section 19.1. Choice of Law

(a) (A) THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR

PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

c/o Consolidated-Tomoka Land Co.
1530 Cornerstone Blvd., Suite 100
Daytona Beach, FL 32117
Attn: General Counsel

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 19.2. Severability

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.3. Preferences

Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Creditors Rights Laws, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

ARTICLE 20
MISCELLANEOUS

Section 20.1. Survival

This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 20.2. Lender's Discretion

Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 20.3. Headings

The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 20.4. Schedules Incorporated

The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 20.5. Offsets, Counterclaims and Defenses

Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 20.6. No Joint Venture or Partnership; No Third Party Beneficiaries

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is

intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

(c) The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

(d) Notwithstanding anything to the contrary contained herein, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(e) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Agreement, the Mortgage, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

(f) Borrower recognizes and acknowledges that in accepting this Agreement, the Note, the Mortgage and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the representations and warranties set forth in Article 4 of this Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Agreement, the Note, the Mortgage and the other Loan Documents in the absence of the warranties and representations as set forth in Article 4 of this Agreement.

Section 20.7. Publicity

Except for disclosures and reporting required by applicable Legal Requirements and communications with shareholders of Guarantor or other constituent entities of Borrower in the ordinary course of business, all news releases, publicity or advertising by Borrower or its Affiliates which Borrower controls or is controlled by, through any media intended to reach the general public which refers to the Loan, Lender, Merrill Lynch, Pierce, Fenner & Smith Incorporated, or any of their Affiliates shall be subject to the prior written approval of Lender, not to be unreasonably withheld. Lender shall be permitted to make any news releases, publicity or advertising by Lender or its Affiliates through any media intended to reach the general public which refers to the Loan, the Property, Borrower and their respective Affiliates without the approval of Borrower or any such Persons. Borrower also agrees that Lender may share any information pertaining to the Loan with Bank of America Corporation, including its bank subsidiaries, Merrill Lynch, Pierce, Fenner & Smith Incorporated and any other Affiliates of the foregoing, in connection with the sale or transfer of the Loan or any Participations and/or Securities created.

Section 20.8. Cross Default; Cross Collateralization

Borrower acknowledges that Lender has made the Loan to Borrower upon the security of its collective interest in the Properties and in reliance upon the aggregate of the Properties taken together being of greater value as collateral security than the sum of the Properties taken separately. Borrower agrees that the Security Instruments are and will be cross-collateralized and cross-defaulted with each other so that (i) an Event of Default under any of the Security Instruments shall constitute an Event of Default under each of the other Security Instruments which secure the Note; (ii) an Event of Default under the Note or this Agreement shall constitute an Event of Default under each Security Instrument; and (iii) each Security Instrument shall constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note.

Section 20.9. Conflict; Construction of Documents; Reliance

In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 20.10. Duplicate Originals; Counterparts

This Agreement and each of the other Loan Documents may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement and each of the other Loan Documents (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document.

Section 20.11. Contribution

(a) In the event of (i) any payment by any one or more of the Borrowers of any amount in excess of the Allocated Loan Amount relating to the Separate Property owned by such Borrower together with interest thereon and any other amounts payable with respect thereto, and (ii) the foreclosure of, or the delivery of deeds in lieu of foreclosure relating to, any of the collateral owned by one or more of the Borrowers, each Borrower (the "Overpaying Borrower") whose collateral or assets have been utilized to satisfy obligations under the Loan or otherwise for the benefit of one or more other Borrowers shall be entitled, after payment in full of the Note and the satisfaction of all the Borrowers' other obligations to Lender, to contribution from each of the benefited Borrowers, for the amounts so paid, advanced or benefited, up to such benefited Borrower's then current applicable Allocated Loan Amount. Any such contribution payments shall be made within ten (10) days after demand therefor.

(b) If a Borrower (a "Defaulting Borrower") shall have failed to make a contribution payment as herein provided, after the payment of the Note in full and the satisfaction of all of the Borrowers' other obligations to Lender, the Overpaying Borrower shall be subrogated to the rights of Lender against such Defaulting Borrower, including the right to receive a portion of the Collateral of such Defaulting Borrower in an amount equal to the contribution payment required hereunder that such Defaulting Borrower failed to make; provided, however, if Lender returns any payments in connection with a bankruptcy of a Borrower, all subrogated Borrowers shall jointly and severally repay Lender all such amounts repaid, together with interest at the rate set forth in the Note.

(c) At the request of any Borrower or Borrowers, upon such repayment of the Note in full and satisfaction of all other obligations of the Borrowers, Lender shall assign the applicable collateral, without recourse, to such Borrower or Borrowers; provided, that, if Lender shall have received conflicting requests from more than one Borrower to receive such collateral and such requesting Borrowers cannot agree as to the disposition of such collateral, Lender shall have no obligation to deliver such collateral to such requesting Borrowers unless and until such requesting Borrowers shall have agreed as to the disposition of such collateral and so authorized Lender. Provided Lender shall have received such authorization, Lender shall assign the collateral in question, without recourse, to the Borrower entitled to receive such collateral within ninety (90) days thereafter. Prior to delivering such collateral, Lender shall be entitled to receive from the requesting Borrower or Borrowers such other assurances, indemnities and agreements as may be reasonably requested by Lender.

(d) The liabilities and obligations of Borrower under this Section 20.11 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

Section 20.12. Liability

If Borrower consists of more than one Person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 20.13. Entire Agreement

This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

BLUEBIRD SOUTH GARDEN GROVE LLC, a
Delaware limited liability company

By: Bluebird14 Holdings LLC, a Delaware limited liability
company, its sole member

By: Consolidated-Tomoka Land Co., a Florida corporation,
its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD SOUTH LAGUNA LLC, a
Delaware limited liability company

By: Bluebird14 Holdings LLC, a Delaware limited liability
company, its sole member

By: Consolidated-Tomoka Land Co., a Florida corporation,
its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD SOUTH TRABUCO MISSION VIEJO LLC, a
Delaware limited liability company

By: Bluebird14 Holdings LLC, a
Delaware limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD SOUTH PUERTA REAL MISSION
VIEJO LLC, a Delaware limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD SOUTH WESTMINSTER LLC, a
Delaware limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD NORTH LA HABRA LLC, a
Delaware limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD NORTH LOS ALAMITOS LLC, a
Delaware limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD NORTH WALNUT LLC, a Delaware
limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD NORTH YORBA LINDA LLC, a
Delaware limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD CAPITAL CIRCLE LLC, a Delaware
limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD CHASE CHICAGO LLC, a Delaware
limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD BWW PHOENIX LLC, a Delaware
limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD WAG PALM BAY LLC, a Delaware
limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BLUEBIRD WAG BOULDER LLC, a Delaware
limited liability company

By: Bluebird14 Holdings LLC, a Delaware
limited liability company, its sole member

By: Consolidated-Tomoka Land Co., a
Florida corporation, its sole member

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

BORROWER PRINCIPAL:

CONSOLIDATED-TOMOKA LAND COMPANY, a Florida
corporation

By: /s/ John P. Albright
Name: John P. Albright
Title: President and CEO

LENDER:

BANK OF AMERICA, N.A., a national banking association

By: /s/ Steven Wasser
Name: Steven Wasser
Title: Managing Director

EXHIBIT A

Borrower Equity Ownership Structure

EXHIBIT B

Form of Tenant Direction Letter

[BORROWER LETTERHEAD]

, 20

[TENANTS UNDER LEASES]

Re: Lease dated _____ between _____,
as Landlord, and _____, as Tenant,
concerning premises known as _____

Gentlemen:

This letter shall constitute notice to you that the undersigned has granted a security interest in the captioned lease and all rents, additional rent and all other monetary obligations to landlord thereunder (collectively, "Rent") in favor of Bank of America, N.A., as lender ("Lender"), to secure certain of the undersigned's obligations to Lender. The undersigned hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with Rent and hereafter to deliver all Rent to the following address:

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to you rescind the instructions contained herein.

Sincerely,
[BORROWER]

ACKNOWLEDGMENT AND AGREEMENT

The undersigned acknowledges notice of the security interest of Lender and hereby confirms that the undersigned has received no notice of any other pledge or assignment of the Rent and will honor the above instructions.

[Tenant]

By: _____

Name:

Its:

Dated as of: _____, 20

SCHEDULE I

BORROWER INFORMATION

<u>Borrower (all Borrowers are Delaware LLC's)</u>	<u>EIN</u>	<u>Property</u>	<u>Allocated Loan Amount</u>	<u>Appraised value of property (as-is)</u>
Bluebird South Garden Grove LLC	59-0483700	BOA – Garden Grove 13952 Brookhurst Street, Garden Grove, CA 92843	\$1,781,075	\$3,300,000
Bluebird South Laguna LLC	59-0483700	BOA – Laguna 299 Ocean Avenue, Laguna Beach, CA 92651	\$1,565,187	\$2,900,000
Bluebird South Trabuco Mission Viejo LLC	59-0483700	BOA – Mission Viejo (Trabuco) 26821 Trabuco Road, Mission Viejo, CA 92691	\$ 944,509	\$1,750,000
Bluebird South Puerta Real Mission Viejo LLC	59-0483700	BOA – Mission Viejo (Puerta Real) 27571 Puerta Real, Mission Viejo, CA 92691	\$ 701,636	\$1,300,000
Bluebird South Westminster LLC	59-0483700	BOA – Westminster 8850 Bolsa Avenue, Westminster, CA 92683	\$1,700,117	\$3,150,000
Bluebird North La Habra LLC	59-0483700	BOA – La Habra 200 East La Habra Boulevard, La Habra, CA 90631	\$1,187,383	\$2,200,000

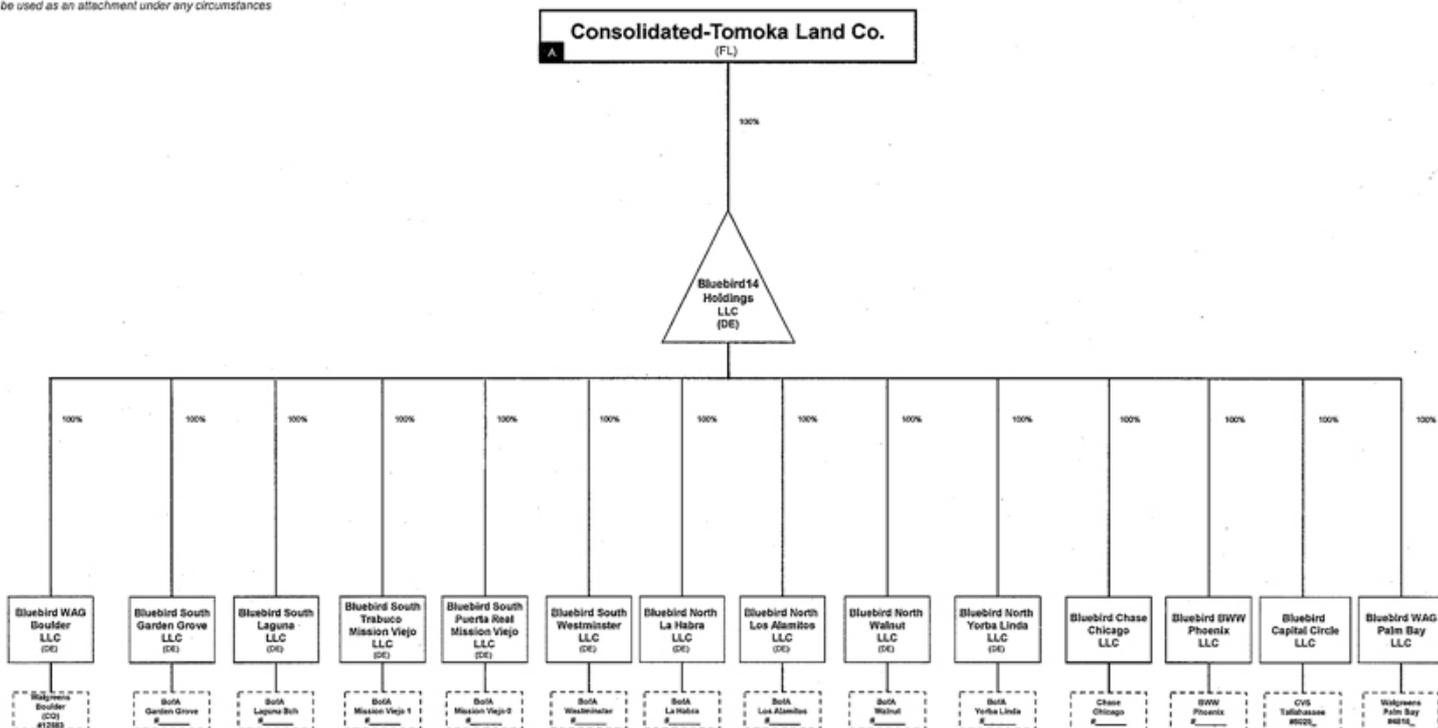
Bluebird North Los Alamitos LLC		BOA – Los Alamitos		
	59-0483700	11262 Los Alamitos Boulevard, Los Alamitos, CA 90720	\$ 917,523	\$1,700,000
Bluebird North Walnut LLC		BOA – Walnut		
	59-0483700	200 S. Lemon Avenue, Walnut, CA 91789	\$1,295,327	\$2,400,000
Bluebird North Yorba Linda LLC		BOA – Yorba Linda		
	59-0483700	19601 Yorba Linda Boulevard, Yorba Linda, CA 92286	\$ 863,551	\$1,600,000
Bluebird Capital Circle LLC		CVS		
	59-0483700	1875 Capital Circle NE, Tallahassee, FL 32308	\$2,428,738	\$4,500,000
Bluebird Chase Chicago LLC		JP Morgan Chase		
	59-0483700	5606 West Montrose Avenue, Chicago, IL 60634	\$2,023,949	\$3,750,000
Bluebird BWW Phoenix LLC		Buffalo Wild Wings		
	59-0483700	2700 W. North Lane, Phoenix, AZ 85051	\$ 998,481	\$1,850,000
Bluebird WAG Palm Bay LLC		Walgreen's – Palm Bay		
	59-0483700	1160 Malabar Road SE, Palm Bay, FL 32907	\$2,536,682	\$4,700,000
Bluebird WAG Boulder LLC		Walgreen's – Boulder		
	59-0483700	2870 28 th Street, Boulder, CO 80301	\$4,155,841	\$7,700,000

SCHEDULE II
REQUIRED REPAIRS

<u>PROPERTY</u>	<u>REQUIRED REPAIR</u>
Bank of America – Garden Grove	None.
Bank of America – La Habra	Re-install the existing regular ADA parking space placard at the compliant height above pavement.
Bank of America – Laguna Beach	None.
Bank of America – Los Alamitos	None.
Bank of America – Mission Viejo	Re-install of the existing parking space placards at the compliant height above pavement.
Bank of America – Mission Viejo	Re-work of existing parking spaces as required to add the missing placard and one (1) “Van Accessible” parking space access aisle, and placard.
Bank of America – Walnut	None.
Bank of America – Westminster	Re-work of existing parking spaces as required to add the missing placard and one (1) “Van Accessible” parking space, access aisle, and placard.
Bank of America – Yorba Linda	Lump sum allowance to make necessary repairs at wood trim in concrete walkway joint pattern as required to eliminate trip hazard, and a rework of the existing ADA parking spaces as required to install placards at the compliant height and include one (1) designated as “Van Accessible.”
Buffalo Wild Wings	Installation of ADA van accessible parking sign.
CVS	Repairing cracking and damage from leaking automobile lubricants in asphalt paving of parking lot, installing a lock on the gate of the chain-link fence enclosing the detention basin, removing storage items from vicinity of fire alarm panel and portable fire extinguisher, installation of van accessible ADA signage and regular ADA signage, and removing of padlocks from pull-box alarm.
JP Morgan Chase	None.
Walgreen’s – Boulder	None.
Walgreen’s – Palm Bay	Removal of storage items from vicinity of electrical panels, and installation of van accessible ADA signage.

Confidential Legal Entity Organizational Chart

-Not for Distribution to any other parties
-Not to be copied, manipulated, distributed or otherwise disclosed.
-Not to be used as an attachment under any circumstances



CONFIDENTIAL – DO NOT COPY OR DISTRIBUTE

CONFIDENTIALITY NOTICE: The information contained herein is confidential and intended only for the use of Consolidated-Tomoka Land Co. or its affiliates and legal counsel. If the reader is not the intended recipient, you are hereby notified that any dissemination, distribution, manipulation or copying of this information is strictly prohibited.

SECOND AMENDMENT TO CREDIT AGREEMENT

This Second Amendment to Credit Agreement (herein, this "*Amendment*") is entered into as of) March 29, 2013, among Consolidated-Tomoka Land Co., a Florida corporation (the "*Borrower*"), the Guarantors party hereto, the Lenders party hereto and Bank of Montreal, Chicago Branch, as Administrative Agent (the "*Administrative Agent*").

PRELIMINARY STATEMENTS

A. The Borrower, the guarantors party thereto (the "*Guarantors*"), the financial institutions party thereto (the "*Lenders*"), and the Administrative Agent entered into that certain Credit Agreement, dated as of February 27, 2012 and a First Amendment to Credit Agreement dated as of September 20, 2012 (such Credit Agreement, as amended, being referred to herein as the "*Credit Agreement*"). All capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Credit Agreement.

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

SECTION 1. AMENDMENTS.

Subject to the satisfaction of the conditions precedent set forth in Section 2 below, the Credit Agreement shall be and hereby is amended as follows:

1.1. The title page of the Credit Agreement is hereby amended by adding Wells Fargo Bank, National Association, as Syndication Agent and Branch Banking and Trust Company, as Documentation Agent to the title page of the Credit Agreement.

1.2. Clause (ii) in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

(ii) the Borrowing Base as then determined and computed.

1.3. The term "Revolving Credit Availability" appearing in the second and third lines of Section 1.8(b)(i) is hereby replaced with the term "Borrowing Base."

1.4. The amount \$75,000,000 set forth in Section 1.15 is hereby deleted and replaced with the amount \$125,000,000.

1.5. The definition of “*Applicable Margin*” in Section 5.1 is hereby amended and restated in its entirety as follows:

“*Applicable Margin*” means, with respect to Loans, Reimbursement Obligations, and the commitment fees and letter of credit fees payable under Section 2.1 hereof, from one Pricing Date to the next the rates per annum determined in accordance with the following schedule:

LEVEL	TOTAL INDEBTEDNESS TO TOTAL ASSET VALUE RATIO FOR SUCH PRICING DATE	APPLICABLE MARGIN FOR BASE RATE LOANS AND REIMBURSEMENT OBLIGATIONS SHALL BE:	APPLICABLE MARGIN FOR EURODOLLAR LOANS AND LETTER OF CREDIT FEE SHALL BE:
I	Less than or equal to 0.25 to 1.00	0.50%	1.50%
II	Less than or equal to 0.35 to 1.00, but greater than 0.25 to 1.00	0.75%	1.75%
III	Less than or equal to 0.45 to 1.00, but greater than 0.35 to 1.00	1.00%	2.00%
IV	Greater than 0.45 to 1.00	1.25%	2.25%

For purposes hereof, the term “*Pricing Date*” means, for any fiscal quarter of the Borrower, the date on which the Administrative Agent is in receipt of the Borrower’s most recent Compliance Certificate and financial statements (and, in the case of the year-end financial statements, audit report) for the fiscal quarter then ended, pursuant to Section 8.5 hereof. The Applicable Margin shall be established based on the Total Indebtedness to Total Asset Value Ratio for the most recently completed fiscal quarter and the Applicable Margin established on a Pricing Date shall remain in effect until the next Pricing Date. If the Borrower has not delivered its Compliance Certificate and financial statements by the date the Compliance Certificate and financial statements (and, in the case of the year-end financial statements, audit report) are required to be delivered under Section 8.5 hereof, then until such Compliance Certificate and financial statements and/or audit report are delivered, the Applicable Margin shall be the highest Applicable Margin (*i.e.*, Level IV shall apply). If the Borrower subsequently delivers such Compliance Certificate and financial statements before the next Pricing Date, the Applicable Margin established by such late delivered Compliance Certificate and financial statements shall take effect from the date of delivery until the next Pricing Date. In all other circumstances, the Applicable Margin established by such Compliance Certificate and financial statements shall be in effect from the Pricing Date that occurs immediately after the end of the fiscal quarter covered by such financial statements until the next Pricing Date. Borrower, Administrative Agent, L/C Issuer and Lenders understand that the applicable interest rate for the Obligations and certain fees set forth herein may be determined and/or adjusted from time to time based upon certain financial ratios and/or other information to be provided or certified to the Administrative Agent and Lenders by Borrower (the “Borrower Information”). If it is subsequently determined that any such Borrower Information was incorrect (for whatever reason, including without limitation because of a subsequent restatement of earnings by the Borrower) at the time it was delivered to the Administrative Agent, and if the applicable interest rate or fees calculated for any period were lower than they should have been had the correct information been timely provided, then, such

interest rate and such fees for such period shall be automatically recalculated using correct Borrower Information; *provided* that no recalculation shall be done for any period that is more than 2 years earlier than the date of recalculation. The Administrative Agent shall promptly notify Borrower in writing of any additional interest and fees due because of such recalculation, and the Borrower shall pay such additional interest or fees due to the Administrative Agent, for the account of each Lender or the L/C Issuer, within five (5) Business Days of receipt of such written notice. Any recalculation of interest or fees required by this provision shall survive the termination of this Agreement, and this provision shall not in any way limit any of the Administrative Agent's, the L/C Issuer's, or any Lender's other rights under this Agreement. Each determination of the Applicable Margin made by the Administrative Agent in accordance with the foregoing shall be conclusive, absent manifest error, and binding on the Borrower and the Lenders if reasonably determined.

The rates set forth in Section 1.5 of this Amendment shall be applicable on and after the date of this Amendment.

1.6. The definition of "*Borrowing Base*" in Section 5.1 is hereby amended and restated in its entirety as follows:

"*Borrowing Base*" means, at any date of its determination, an amount equal to the lesser of (A) 60% of the Borrowing Base Value of all Eligible Properties on such date and (B) the Debt Service Coverage Amount of all Eligible Properties on such date, minus Unsecured Indebtedness excluding the outstanding principal amount of Revolving Loans and Swing Loans and L/C Obligations.

1.7. The definition of "*Revolving Credit Availability*" in Section 5.1 is hereby amended and restated in its entirety as follows:

"*Revolving Credit Availability*" means the Borrowing Base minus the outstanding principal amount of Revolving Loans and Swing Loans and L/C Obligations.

1.8. The definition of "*Revolving Credit Termination Date*" in Section 5.1 is hereby amended and restated in its entirety as follows:

"*Revolving Credit Termination Date*" means the earliest of (i) March 31, 2016, as such date may be extended pursuant to Section 1.16, (ii) the date on which the Revolving Credit Commitments are terminated in whole pursuant to Section 1.12, 9.2 or 9.3 hereof and (iii) the date on which a mandatory prepayment under Section 1.8(b)(iii) is required to be made.

1.9. Section 7.1(b) of the Credit Agreement is hereby amended and restated in its entirety as follows:

(b) no Default or Event of Default shall have occurred and be continuing or would occur as a result of such Credit Event and, after giving effect to such Credit Event, the Revolving Credit Availability as then determined and computed shall be no less than \$0;

1.10. The percentage 10% set forth in Section 8.8(l) is hereby deleted and replaced with the percentage 15%.

1.11. Section 8.8(o) is hereby amended and restated in its entirety as follows:

(o) investments in Land Assets and Land Assets contributed to joint ventures and up to \$3,500,000 to be invested in Indigo Community Development District (“CDD”) bonds in Indigo CDD series 1999A, 1999C and 2005A in an amount not to exceed in the aggregate at any one time outstanding 32.5% of the Total Asset Value of the Borrower and its Subsidiaries at such time during calendar years 2012 and 2013 and 25% of Total Asset Value of the Borrower and its Subsidiaries at such time from and after January 1, 2014.

1.12. The amount \$96,626,249 set forth in Section 8.20(e) is hereby deleted and replaced with the amount \$93,243,118.

1.13. Section 11.7 of the Credit Agreement is hereby amended and restated in its entirety as follows:

Section 11.7. Resignation of Administrative Agent, Removal of Administrative Agent and Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Lenders, the L/C Issuer, and the Borrower. The Required Lenders may remove the Administrative Agent from its capacity as Administrative Agent in the event of the Administrative Agent’s willful misconduct or gross negligence. Upon any such resignation or removal of the Administrative Agent, the Required Lenders shall have the right to appoint a successor Administrative Agent reasonably acceptable to Borrower. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring or removed Administrative Agent’s giving of notice of resignation or removal by the Required Lenders then the retiring or removed Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, reasonably acceptable to Borrower, which may be any Lender hereunder or any commercial bank, or an Affiliate of a commercial bank, having an office in the United States of America and having a combined capital and surplus of at least \$200,000,000. Upon the acceptance of its appointment as the Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Administrative Agent under the Loan Documents, and the retiring Administrative Agent shall be discharged from its duties and obligations thereunder. After any retiring Administrative Agent’s resignation hereunder as Administrative Agent or removal of the Administrative Agent, the provisions of this Section 11 and all protective provisions of the other Loan Documents shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent, but no successor Administrative Agent shall in any event be liable or responsible

for any actions of its predecessor. If the Administrative Agent resigns or is removed and no successor is appointed, the rights and obligations of such Administrative Agent shall be automatically assumed by the Required Lenders and the Borrower shall be directed to make all payments due each Lender and L/C Issuer hereunder directly to such Lender or L/C Issuer.

1.14. The following sentence is hereby added to Section 12.11 of the Credit Agreement:

No participation may be granted or sold to the Borrower, any Guarantor, any Affiliate or Subsidiary of Borrower or Guarantor, any Defaulting Lender or any natural person.

1.15. Section 12.12(a)(iii) of the Credit Agreement is hereby amended and restated in its entirety as follows:

(iii) *Required Consents*. No consent shall be required for any assignment except to the extent required by Section 12.12(a)(i)(B) and, in addition:

(a) the consent of the Borrower (such consent not to be unreasonably withheld or delayed and to be given or denied within five (5) Business Days of written request therefor) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund;

(b) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed and to be given or denied within five (5) Business Days of written request therefor) shall be required if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(c) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed and to be given or denied within five (5) Business Days of written request therefor) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(d) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed and to be given or denied within five (5) Business Days of written request therefor) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Swing Loans (whether or not then outstanding).

1.16. Section 12.12(a)(v) of the Credit Agreement is hereby amended and restated in its entirety as follows:

(v) *No Assignment to Borrower, Guarantors, Affiliates or Subsidiaries*. No such assignment shall be made to the Borrower, any Guarantor or any Affiliate or Subsidiary of the Borrower or any Guarantor.

1.17. The following section is hereby added to Section 12.12(a) at the end thereof:

(vii) *No Assignment to Defaulting Lender*. No such assignment shall be made to a Defaulting Lender.

1.18 Clause (i) in Section 12.13 of the Credit Agreement is hereby amended and restated in its entirety as follows:

(i) no amendment or waiver pursuant to this Section 12.13 shall (A) increase any Revolving Credit Commitment of any Lender without the consent of such Lender or (B) reduce the amount of or postpone the date for any scheduled payment of any principal of or interest on any Revolving Loan or of any Reimbursement Obligation or of any fee payable hereunder (including by way of a waiver of a Default or Event of Default under Section 9.1(a)) without the consent of the Lender to which such payment is owing or which has committed to make such Revolving Loan or Letter of Credit (or participate therein) hereunder;

1.19. Schedule I to the form of Compliance Certificate attached to the Credit Agreement as Exhibit E is hereby replaced by Schedule I attached hereto.

1.20. The form of Borrowing Base Certificate attached to the Credit Agreement as Exhibit I is hereby replaced by Exhibit I attached hereto.

SECTION 2. CONDITIONS PRECEDENT.

The effectiveness of this Amendment is subject to the satisfaction of all of the following conditions precedent:

2.1. The Borrower, the Guarantors, the Lenders and the Administrative Agent shall have executed and delivered to the Administrative Agent this Amendment.

2.2. Legal matters incident to the execution and delivery of this Amendment shall be reasonably satisfactory to the Administrative Agent and its counsel.

SECTION 3. REPRESENTATIONS.

In order to induce the Administrative Agent and the Lenders to execute and deliver this Amendment, the Borrower hereby represents to the Administrative Agent and the Lenders that (a) after giving effect to this Amendment, the representations and warranties set forth in Section 6 of the Credit Agreement are and shall be and remain true and correct in all material respects as of the date hereof (or, if any such representation and warranty is expressly stated to

have been made as of a specific date, as of such specific date) and (b) no Default or Event of Default has occurred and is continuing under the Credit Agreement or shall result after giving effect to this Amendment.

SECTION 4. MISCELLANEOUS.

4.1. Except as specifically amended herein, the Credit Agreement shall continue in full force and effect in accordance with its original terms. Reference to this specific Amendment need not be made in the Credit Agreement, the Notes, the other Loan Documents, or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Credit Agreement, any reference in any of such items to the Credit Agreement being sufficient to refer to the Credit Agreement as amended hereby.

4.2. The Borrower agrees to pay on demand all reasonable costs and out-of-pocket expenses of or incurred by the Administrative Agent in connection with the negotiation, preparation, execution and delivery of this Amendment, including the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent.

4.3. Each Guarantor consents to the amendments and modifications to the Credit Agreement as set forth herein and confirms all of its obligations under its Guaranty remain in full force and effect. Furthermore, each Guarantor acknowledges and agrees that the consent of the Guarantors, or any of them, to any further amendments to the Credit Agreement shall not be required as a result of this consent having been obtained.

4.4. This Amendment may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Delivery of executed counterparts of this Amendment by Adobe portable document format (a "PDF") via e-mail or by facsimile shall be effective as an original. This Amendment shall be governed by the internal laws of the State of New York.

[SIGNATURE PAGES FOLLOW]

This Second Amendment to Credit Agreement is entered into as of the date and year first above written.

"BORROWER"

CONSOLIDATED-TOMOKA LAND CO., a Florida corporation

By /s/ Mark E. Patten

Name Mark E. Patten

Title Senior Vice President and CFO

"GUARANTORS"

INDIGO DEVELOPMENT LLC,
a Florida limited liability company

By: Consolidated -Tomoka Land Co.
a Florida corporation
Its Managing Member

By /s/ Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and CFO

INDIGO SANFORD LLC,
a Florida limited liability company

By: Indigo Development LLC,
a Florida limited liability company,
Its Sole Member,

By: Consolidated -Tomoka Land Co.
a Florida corporation,
Its Managing Member

By /s/ Mark E. Patten

Name: Mark E. Patten

Title: Senior Vice President and CFO

[SIGNATURE PAGE TO SECOND AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]

Accepted and agreed to.

“ADMINISTRATIVE AGENT” AND “L/C ISSUER”

BANK OF MONTREAL, Chicago Branch, as L/C Issuer and as
Administrative Agent

By /s/ Aaron Lanski

Name Aaron Lanski

Title Managing Director

“LENDERS”

BANK OF MONTREAL

By /s/ Aaron Lanski

Name Aaron Lanski

Title Managing Director

BRANCH BANKING AND TRUST COMPANY

By /s/ James Wright

Name James Wright

Title Banking Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION

By /s/ Jennifer Molnar

Name Jennifer Molnar

Title Vice President

[SIGNATURE PAGE TO SECOND AMENDMENT TO CONSOLIDATED-TOMOKA LAND CO. CREDIT AGREEMENT]

**SCHEDULE I
TO COMPLIANCE CERTIFICATE**

**COMPLIANCE CALCULATIONS
FOR CREDIT AGREEMENT DATED AS OF FEBRUARY 27, 2012, AS AMENDED**

CALCULATIONS AS OF _____ ,

A. <u>Maximum Total Indebtedness to Total Asset Value Ratio (Section 8.20(a)).</u>		
1.	Total Indebtedness	\$
2.	Total Asset Value as calculated on Exhibit A hereto	
3.	Ratio of Line A1 to A2	:1.0
4.	Line A3 must not exceed	0.55:1.0
5.	The Borrower is in compliance (circle yes or no)	yes/no
B. <u>Maximum Secured Indebtedness to Total Asset Value Ratio (Section 8.20(b)).</u>		
1.	Secured Indebtedness	\$
2.	Total Asset Value as calculated on Exhibit A hereto	
3.	Ratio of Line B1 to B2	:1.0
4.	Line B3 must not exceed	0.35:1.0
5.	The Borrower is in compliance (circle yes or no)	yes/no
C. <u>Minimum Adjusted EBITDA to Fixed Charges Ratio (Section 8.20(c)).</u>		
1.	Net Income	\$
2.	Depreciation and amortization expense	
3.	Interest Expense	
4.	Income tax expense	
5.	Extraordinary, unrealized or non-recurring losses	
6.	Extraordinary, unrealized or non-recurring gains	
7.	Income tax benefits	

8.	Annual Capital Expenditure Reserve	
9.	Sum of Lines C2, C3, C4 and C5	
10.	Sum of Lines C6 and C7 and C8	
11.	Line C1 plus Line C9 minus Line C10 (“Adjusted EBITDA”)	
12.	Interest Expense	
13.	Principal Amortization Payments	
14.	Dividends	
15.	Stock Repurchases	
16.	Income Taxes Paid	
17.	Sum of Lines C12, C13, C14, C15 and C16 (“Fixed Charges”)	
18.	Ratio of Line C11 to Line C17	:1.0
19.	Line C18 shall not be less than	1.75:1.0
20.	The Borrower is in compliance (circle yes or no)	yes/no
D.	<u>Maximum Secured Recourse Indebtedness to Total Asset Value Ratio (Section 8.20(d)).</u>	
1.	Secured Recourse Indebtedness	\$
2.	Total Asset Value as calculated on Exhibit A hereto	
3.	Ratio of Line D1 to Line D2	:1.0
4.	Line D3 shall not exceed	0.05:1.0
5.	The Borrower is in compliance (circle yes or no)	yes/no
E.	<u>Tangible Net Worth (Section 8.20(e)).</u>	
1.	Tangible Net Worth	\$
2.	Aggregate net proceeds of Stock and Stock Equivalent offerings	
3.	75% of Line E2	
4.	\$93,243,118 plus Line E3	
5.	Line E1 shall not be less than Line E4	
6.	The Borrower is in compliance (circle yes or no)	yes/no

F. <u>Investments (Joint Ventures)</u>, (Section 8.8(j)).		
1.	Cash Investments in Joint Ventures	\$
2.	Total Asset Value	
3.	Line F1 divided by Line F2	
4.	Line F3 shall not exceed 10% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
G. <u>Investments (Assets Under Development)</u>, (Section 8.8(k)).		
1.	Assets Under Development	\$
2.	Total Asset Value	
3.	Line G1 divided by Line G2	
4.	Line G3 shall not exceed 7.5% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
H. <u>Investments (Mortgage Loans, Mezzanine Loans and Notes Receivable)</u>, (Section 8.8(l)).		
1.	Mortgage Loans, Mezzanine Loans and Notes Receivable	\$
2.	Total Asset Value	
3.	Line H1 divided by Line H2	
4.	Line H3 shall not exceed 15% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
I. <u>Investments (Ground Leases)</u>, (Section 8.8(m)).		
1.	Investments in Ground Leases other than Permitted Ground Lease Investments	\$
2.	Total Asset Value	
3.	Line I1 divided by Line I2	
4.	Line I3 shall not exceed 25% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
J. <u>Investments (Stock Repurchases)</u>, (Section 8.8(n)).		
1.	Aggregate amount of Borrower's stock repurchases	\$
2.	Line J1 shall not exceed \$8,000,000	
3.	The Borrower is in compliance (circle yes or no)	yes/no

K. <u>Investments (Land Assets and CDD Bonds)(Section 8.8(o)).</u>		
1.	Land Assets	\$
2.	CDD Bonds	
3.	Line K1 plus Line K2	
4.	Total Asset Value	
5.	Line K3 divided by Line K4	
6.	Line K2 shall not exceed \$3,500,000 and Line K5 shall not exceed 32.5% of Total Asset Value for 2012 and 2013 and 25% of Total Asset Value for 2014	
7.	The Borrower is in compliance (circle yes or no)	yes/no
L. <u>Aggregate Investment Limitation to Total Asset Value (Section 8.8).</u>		
1.	Sum of Lines F1, G1, H1, I1 and J1	\$
2.	Total Asset Value	
3.	Line L1 divided by Line L2	
4.	Line L3 shall not exceed 25% of Total Asset Value	
5.	The Borrower is in compliance (circle yes or no)	yes/no
M. <u>Golf Course Capital Expenditures (Section 8.22).</u>		
1.	Aggregate Amount of Capital Expenditures for Golf Courses during 20	\$
2.	Line M1 shall not exceed \$500,000 for 2012 and \$250,000 for 2013 and thereafter	
3.	The Borrower is in compliance (circle yes or no)	yes/no

**EXHIBIT A TO SCHEDULE I
TO COMPLIANCE CERTIFICATE
OF CONSOLIDATED-TOMOKA LAND CO.**

This Exhibit A, with a calculation date of _____, _____, is attached to Schedule I to the Compliance Certificate of Consolidated-Tomoka Land Co. dated February 27, 2012, as amended, and delivered to Bank of Montreal, as Administrative Agent, and the Lenders party to the Credit Agreement, as amended, referred to therein. The undersigned hereby certifies that the following is a true, correct and complete calculation of Total Asset Value for Rolling Period most recently ended:

[Insert Calculation]

CONSOLIDATED-TOMOKA LAND CO.

By: _____
Name: _____
Title: _____

**EXHIBIT B TO SCHEDULE I
TO COMPLIANCE CERTIFICATE
OF CONSOLIDATED-TOMOKA LAND CO.**

This Exhibit B, with a calculation date of _____, is attached to Schedule I to the Compliance Certificate of Consolidated-Tomoka Land Co. dated February 27, 2012, as amended, and delivered to Bank of Montreal, as Administrative Agent, and the Lenders party to the Credit Agreement, as amended, referred to therein. The undersigned hereby certifies that the following is a true, correct and complete calculation of Property NOI for all Properties for Rolling Period most recently ended:

<u>PROPERTY</u>	<u>PROPERTY INCOME</u>	<u>MINUS</u>	<u>PROPERTY EXPENSES (WITHOUT CAP. EX. RESERVE OR MANAGEMENT FEES)</u>	<u>MINUS</u>	<u>ANNUAL CAPITAL EXPENDITURE RESERVE</u>	<u>MINUS</u>	<u>GREATER OF 3% OF RENTS OR ACTUAL MANAGEMENT FEES</u>	<u>EQUALS</u>	<u>PROPERTY NOI</u>
	\$	-	\$					=	\$
	\$	-	\$					=	\$
	\$	-	\$					=	\$
	\$	-	\$					=	\$
TOTAL PROPERTY NOI FOR ALL PROPERTIES:									\$

CONSOLIDATED-TOMOKA LAND CO.

By: _____
 Name: _____
 Title: _____

EXHIBIT I

BORROWING BASE CERTIFICATE

To: Bank of Montreal, as Administrative Agent under, and the Lenders party to, the Credit Agreement described below.

Pursuant to the terms of the Credit Agreement dated as of February 27, 2012, as amended, among us (the "Credit Agreement"), we submit this Borrowing Base Certificate to you and certify that the calculation of the Borrowing Base set forth below and on any Exhibits to this Certificate is true, correct and complete as of the Borrowing Base Determination Date.

A. Borrowing Base Determination Date: _____, 20__ .

B. The Borrowing Base and Revolving Credit Availability as of the Borrowing Base Determination Date is calculated as:

1.	60% of the Borrowing Base Value as calculated on Exhibit A hereto	\$
2.	Debt Service Coverage Amount as calculated on Exhibit B hereto	\$
3.	The lesser of Line 1 and Line 2	\$
4.	Aggregate Unsecured Indebtedness excluding Revolving Loans, Swing Loans and L/C Obligations outstanding	\$
5.	Line 3 minus Line 4 (the "Borrowing Base")	\$
6.	Aggregate Revolving Loans, Swing Loans and L/C Obligations outstanding	\$
7.	Line 5 minus Line 6 (the "Revolving Credit Availability")	\$

The foregoing certifications, together with the computations set forth in Schedule I hereto are made and delivered this _____ day of _____ 20__ .

CONSOLIDATED-TOMOKA LAND CO.

By: _____
Name: _____
Title: _____

**EXHIBIT A TO BORROWING BASE CERTIFICATE
OF CONSOLIDATED-TOMOKA LAND CO.**

This Exhibit A is attached to the Borrowing Base Certificate of Consolidated-Tomoka Land Co. for the Borrower Base Determination Date of _____, 20____ and delivered to Bank of Montreal, as Administrative Agent, and the Lenders party to the Credit Agreement dated February 27, 2012, as amended, referred to therein. The undersigned hereby certifies that the following is a true, correct and complete calculation of Borrowing Base Value as of the Borrowing Base Determination Date set forth above:

[Insert Calculation or attach Schedule with exclusions for concentration limits]

BORROWING BASE VALUE OF ALL ELIGIBLE PROPERTIES: _____ \$

BORROWING BASE REQUIREMENTS:

A. Number of Properties

1. The number of Eligible Properties _____
2. Line A1 shall not be less than 12 _____
3. The Borrower is in compliance (circle yes or no) _____ yes/no

B. Borrowing Base Value

1. Borrowing Base Value _____ \$
2. Line B1 shall not be less than \$75,000,000 _____
3. The Borrower is in compliance (circle yes or no) _____ yes/no

C. Non-Retail Properties

1. Percent of Borrowing Base Value attributable to Non-Retail Properties _____ %
2. Line C1 shall not be greater than 35% _____
3. The Borrower is in compliance (circle yes or no) _____ yes/no

D. Individual Eligible Property Value

1. The Percentage of Borrowing Base Value of each Eligible Property is set forth [above or on the attached Schedule] and the largest Borrowing Base Value or any Eligible Property is \$ _____ for the _____ Eligible Property.
2. No Eligible Property comprises more than 15% of Borrowing Base Value _____
3. The Borrower is in compliance (circle yes or no) _____ yes/no

E. Single Tenant Borrowing Base Value

1. The largest amount of Borrowing Base Value from a single Tenant that does not maintain a Rating of at least BBB-/Baa3 from S&P or Moody's, respectively, is \$ from .
2. No single Tenant that does not maintain a Rating of at least BBB-/Baa3 from S&P or Moody's, respectively, comprises more than 15% of Borrowing Base Value
3. The Borrower is in compliance (circle yes or no) yes/no

F. Permitted Ground Lease Investments

1. Percent of Borrowing Base Value attributable to Permitted Ground Lease Investments %
2. Line F1 shall not be greater than 30%
3. The Borrower is in compliance (circle yes or no) yes/no

G. Hotels, Motels and Resorts

1. Percent of Borrowing Base Value attributable to Hotels, Motels or Resorts %
2. Line G1 shall not be greater than 20%
3. The Borrower is in compliance (circle yes or no) yes/no

**EXHIBIT B TO BORROWING BASE CERTIFICATE
OF CONSOLIDATED-TOMOKA LAND CO.**

This Exhibit B is attached to the Borrowing Base Certificate of Consolidated-Tomoka Land Co. for the Borrowing Base Determination Date of _____, 20____ and delivered to Bank of Montreal, as Administrative Agent, and the Lenders party to the Credit Agreement dated February 27, 2012, as amended, referred to therein. The undersigned hereby certifies that the following is a true, correct and complete calculation of Debt Service Coverage Amount as of the Borrowing Base Determination Date set forth above:

<u>ELIGIBLE PROPERTIES</u>	DEBT SERVICE COVERAGE AMOUNT AS CALCULATED ON ANNEX I TO THIS EXHIBIT B
	\$
	\$
	\$
	\$
TOTAL DEBT SERVICE COVERAGE AMOUNT OF ALL ELIGIBLE PROPERTIES:	\$

**ANNEX I TO EXHIBIT B TO BORROWING BASE CERTIFICATE
OF CONSOLIDATED-TOMOKA LAND CO.**

[Borrower to Insert Calculation of Debt Service Coverage Amount for each Eligible Property with concentration limit exclusions]

CERTIFICATIONS

I, John P. Albright, certify that:

1. I have reviewed this Form 10-Q of Consolidated-Tomoka Land Co.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 3, 2013

By: /s/ John P. Albright

John P. Albright
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Mark E. Patten, certify that:

1. I have reviewed this Form 10-Q of Consolidated-Tomoka Land Co.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 3, 2013

By: /s/ Mark E. Patten

Mark E. Patten
 Senior Vice President Chief Financial Officer
 (Principal Financial and Accounting Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Consolidated-Tomoka Land Co. (the "Company") on Form 10-Q for the period ended March 31, 2013, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John P. Albright, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 3, 2013

By: /s/ John P. Albright

John P. Albright
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Consolidated-Tomoka Land Co. (the "Company") on Form 10-Q for the period ended March 31, 2013, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark E. Patten, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 3, 2013

By: /s/ Mark E. Patten

Mark E. Patten
Senior Vice President Chief Financial Officer
(Principal Financial and Accounting Officer)