

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

GUMBERG ASSOCIATES – CHAPEL
SQUARE, a Pennsylvania limited
partnership; WATERWORKS PHASE II,
a Pennsylvania limited partnership;
WGW ASSOCIATES, a Pennsylvania
limited partnership; NORTHTOWNE
ASSOCIATES, a Pennsylvania limited
partnership; and CANH ASSOCIATES,
a Pennsylvania limited partnership,

Plaintiffs,

v.

KEYBANK NATIONAL
ASSOCIATION, a national banking
association; and MIDLAND LOAN
SERVICES, a division of PNC Bank,
National Association, a national banking
association,

Defendants.

TO DEFENDANTS:

You are hereby notified to file a written
response to the enclosed Complaint
within twenty (20) days from the date of
service hereof or a judgment may be
entered against you.

See following page for an important
NOTICE TO DEFEND.

BURNS WHITE LLC

By:

Mary-Jo Rebelo

) CIVIL ACTION

) No. _____

) Type of Case: Breach of Contract – Duty
) of Good Faith and Fair Dealing;
) Tortious Interference with Business
) Relations; Declaratory Judgement
) and Injunctive Relief

) Type of Pleading: **COMPLAINT**

) Filed on Behalf of: Plaintiffs

) Counsel of Record for Plaintiffs:

Mary-Jo Rebelo
Pa. I.D. No. 53539
Jason J. Cervone
Pa. I.D. No. 91173
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II, a Pennsylvania limited partnership;) No. _____
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association; and MIDLAND LOAN)
SERVICES, a division of PNC Bank,)
National Association, a national banking)
association,)

Defendants.

NOTICE TO DEFEND

To Defendant KEYBANK NATIONAL ASSOCIATION
and Defendant MIDLAND LOAN SERVICES:

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

[Notice continues on next page]

NOTICE TO DEFEND
[Continued from previous page]

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE:

**Lawyer Referral Service
Allegheny County Bar Association
11th Floor, Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 261-5555**

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National Association, a national banking)
association,)
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Defendants.

COMPLAINT

AND NOW come Plaintiffs Gumberg Associates – Chapel Square, Waterworks Phase II, WGW Associates, Northtowne Associates, and CANH Associates (collectively, “Plaintiffs” or “Borrowers”), by and through their undersigned counsel, and hereby file this COMPLAINT and further plead and state as follows:

OVERVIEW

1. Plaintiffs operate large, first-class retail shopping centers in Allegheny County and elsewhere. These shopping centers, managed by the Gumberg family, have served the citizens of the greater Pittsburgh area and its surrounding areas for almost forty years.

2. Plaintiffs and the shopping centers that they operate have been significantly affected by the unprecedented COVID-19 events of calendar year 2020. Plaintiff's valued retail tenants—the various individual stores and businesses, large and small—have, likewise, been significantly affected by these unprecedented COVID-19 events.

3. As is typical within the industry, Plaintiffs have longstanding relationships with lenders and others to facilitate financing for, and ongoing operation of, their shopping centers. Financing agreements for the shopping centers provide important benefits to both the borrowers and the lenders and are designed and intended to be a “win-win” situation in this regard.

4. Such agreements, however, are critically dependent upon all parties' good faith conduct and fair dealing during the term of the agreement. This prevents frustration of a financing agreement's core purpose, and ensures that the shopping centers remain healthy, that the shopping centers' rent-paying tenant spaces remain occupied, and that good will is fostered with the various tenant stores. All of this, in turn, provides economic benefit to both the borrowers and the lenders.

5. In this case, Plaintiffs are the borrowers (“Borrowers”) on an April 1, 2014 Loan Agreement (the “Loan Agreement”). A true and correct copy of the Loan Agreement is attached hereto as **Exhibit 1**, and is incorporated herein by reference.¹ This Loan Agreement provides the Borrowers with funds necessary for the operation and continued vitality of multiple shopping centers.

¹ The copy of the Loan Agreement attached to this Complaint consists of the full agreement through and including its signature pages, as well as Schedules I, II, and III of the Loan Agreement. Additional attachments to the Loan Agreement beyond Schedule III have been omitted from the version attached to this Complaint due to their size and because of confidentiality concerns. Those additional attachments are identified on page “iv” of the Loan Agreement within its index of “Schedules,” and consist of Schedules IV-VII, Schedule 4.1.6, and Exhibit A. In the event that any of these omitted attachments become relevant to this case, Plaintiffs reserve all rights to supplement by filing any or all of those attachments under seal or subject to other appropriate confidentiality measures.

6. As set forth more fully below, Defendants are the master servicer and the special servicer of the Loan Agreement.

7. Plaintiffs, the Borrowers, bring this action against Defendants, *inter alia*, because Defendants have engaged in an outrageous series of actions and inactions—including actions and inactions sounding in bad faith—with respect to their administration and servicing of the Loan Agreement. Defendants' baseless, arbitrary, and unwarranted conduct—in the midst of a global pandemic—has threatened Plaintiffs' abilities to continue to operate the shopping centers at-issue as a going concern and has, upon information and belief, threatened and chilled Plaintiffs' business relationships with tenants and prospective tenants.

8. Defendants' actions and inactions frustrate the central purpose of the Loan Agreement and, in that regard, are breaches of Defendants' duties of good faith and fair dealing with respect to that agreement. This is true both with respect to individual instances of conduct taken alone and also with respect to a collective assessment of Defendants' conduct toward Plaintiffs.

9. Of particular note—and highlighting the outrageousness of Defendants' positions and conduct—Plaintiffs have timely made all payments under the Loan Agreement to Defendants in full, even during the extreme COVID-19 events of the past year.

10. In addition to seeking damages related to Defendants' breaches and interference, Plaintiffs seek declaratory and related injunctive relief herein, including relief necessary to maintain tenant relationships and necessary to maintain ongoing operation of the shopping centers at-issue.

PARTIES

11. Plaintiff Gumberg Associates – Chapel Square is one of the five named Borrowers on the Loan Agreement at-issue. The other Borrowers are the other named Plaintiffs in this case. Gumberg Associates – Chapel Square is a Pennsylvania limited partnership. Its general partner is Gumberg Chapel Square Holdings, LLC, which is a Delaware limited liability company that, in turn, is wholly owned by Ira J. Gumberg. Ira J. Gumberg is an individual and is a Pennsylvania resident.

12. Plaintiff Waterworks Phase II is one of the five named Borrowers on the Loan Agreement at-issue. The other Borrowers are the other named Plaintiffs in this case. Waterworks Phase II is a Pennsylvania limited partnership. Its general partner is Gumberg Waterworks Phase II Holdings, LLC, which is a Delaware limited liability company that, in turn, is wholly owned by Ira J. Gumberg. Ira J. Gumberg is an individual and is a Pennsylvania resident.

13. Plaintiff WGW Associates is one of the five named Borrowers on the Loan Agreement at-issue. The other Borrowers are the other named Plaintiffs in this case. WGW Associates is a Pennsylvania limited partnership. Its general partner is Gumberg WGW Holdings, LLC, which is a Delaware limited liability company that, in turn, is owned by Ira J. Gumberg and WGW, Inc. Ira J. Gumberg is an individual and is a Pennsylvania resident. WGW, Inc. is a Pennsylvania corporation.

14. Plaintiff Northtowne Associates is one of the five named Borrowers on the Loan Agreement at-issue. The other Borrowers are the other named Plaintiffs in this case. Northtowne Associates is a Pennsylvania limited partnership. Its general partner is Gumberg Northtowne Holdings, LLC, which is a Delaware limited liability company that, in turn, is owned by Ira J.

Gumberg and Northtowne Associates, Inc. Ira J. Gumberg is an individual and is a Pennsylvania resident. Northtowne Associates, Inc. is a Pennsylvania corporation.

15. Plaintiff CANH Associates is one of the five named Borrowers on the Loan Agreement at-issue. The other Borrowers are the other named Plaintiffs in this case. CANH Associates is a Pennsylvania limited partnership. Its general partner is Gumberg North Huntingdon Square Holdings, LLC, which is a Delaware limited liability company that, in turn, is owned by Ira J. Gumberg and CANH Incorporated. Ira J. Gumberg is an individual and is a Pennsylvania resident. CANH Incorporated is a Pennsylvania corporation.

16. Defendant KeyBank National Association (“KeyBank”) is the Master Servicer for the Loan Agreement at-issue. KeyBank is a national banking association with its main office located in Ohio. KeyBank maintains a significant presence within Pennsylvania and within Allegheny County, including but not limited to having more than 100 bank branch offices in Pennsylvania and more than 30 bank branch offices in Allegheny County.

17. Defendant Midland Loan Services (“Midland”) is the Special Servicer for the Loan Agreement at-issue. Midland is a division of PNC Bank, National Association, which is a national banking association with its main office located in Pittsburgh, Allegheny County, Pennsylvania.

JURISDICTION AND VENUE

18. Personal jurisdiction over Defendants is proper because both maintain a business presence and conduct business within the Commonwealth of Pennsylvania and because both entered into the Loan Agreement with Plaintiffs concerning shopping centers that are located within the Commonwealth of Pennsylvania.

19. Venue in Allegheny County, Pennsylvania, is proper because, *inter alia*, the shopping centers that are the subject of the Loan Agreement include a shopping center located in Allegheny County, Pennsylvania.

20. The Loan Agreement does not contain an exclusive choice of forum.

CHOICE OF LAW

21. The Loan Agreement selects New York law as the governing law to be applied to that Loan Agreement.

STATEMENT OF FACTS

The Loan Agreement

22. As noted, Plaintiffs are the Borrowers on an April 1, 2014 Loan Agreement, **Exhibit 1**. This Loan Agreement provides the Borrowers with funds necessary for the operation and continued vitality of multiple shopping centers.

23. Defendants KeyBank and Midland, in their respective roles as Master Servicer and Special Servicer to the Loan Agreement, serve as parties to the Loan Agreement and jointly exercise extensive control over the Loan Agreement and its application, administration, and other servicing.

24. Defendants, working together, exercise particular control over the Loan Agreement with respect to how it is applied, administered, and serviced vis-a-vis the Borrowers/Plaintiffs.

25. Defendants' decisions that are made under the umbrella of the Loan Agreement directly affect Plaintiffs, including, *inter alia*, Plaintiffs' abilities to continue to operate the shopping centers involved and Plaintiffs' relationships with tenant stores and others.

26. The essential and core purpose of the Loan Agreement is to permit the Plaintiffs to operate the shopping centers involved as a going concern. The ongoing operation of the shopping centers provides economic benefits to all involved—the Plaintiffs, the non-party tenants, and the Defendants.

27. Creation of the “win-win” situation that occurs for Plaintiffs and Defendants via continued, ongoing operation of the shopping centers as a going concern is the intent of the Loan Agreement and is the intended object of the Loan Agreement.

28. Consistent with the foregoing, the benefits to Defendants under the Loan Agreement result from the maintenance of healthy operations and the ongoing returns on the loan that are thus generated.

29. Conversely, the purpose and object of the Loan Agreement is *not* to provide a mechanism for the Defendants to make a quick grab for the shopping centers or for Plaintiffs’ assets through the exercise of punitive measures, such as a cash sweep, or through the exercise of administrative decisions that intentionally cripple ongoing operations and/or ongoing tenant relationships and prospective relationships. Any such mechanisms exist to provide a reasonable measure of security for the loan but do not exist so that they can be unreasonably applied in order to intentionally frustrate the ongoing operations of the shopping centers.

30. Here, despite the global COVID-19 pandemic and its unprecedented effects upon retail shopping centers, Plaintiffs have timely made all payments due under the Loan Agreement and have, to date, continued to operate the shopping centers involved and have continued to acquire and retain tenants in furtherance of such operations.

31. Since the loan was established pursuant to the Loan Agreement, and continuing to this day, Defendants have received all payments required under the Loan Agreement. Plaintiffs have never failed to pay under the Loan Agreement or become delinquent, in this regard.

The Treasure Hunt Construction Reimbursement

32. Defendants, via their servicing of the Loan Agreement, are presently controlling the release of \$100,000 in funds that are owed to one of Plaintiffs' tenants, commonly referred to as "Treasure Hunt," for the reimbursement of its tenant improvement expenses. These funds are indisputably due and owing to the tenant pursuant to the terms of tenant's lease. The Defendants are presently holding monies in excess of \$4.38 million funded by Plaintiffs and specifically reserved for the very purpose for which Plaintiffs have requested release by Defendants to Treasure Hunt—*i.e.*, reimbursement of tenant improvement expenses.

33. A representative of KeyBank, Carrie Redding, indicated that a reimbursement check of \$50,000 would be sent to Treasure Hunt in or about September 2020.

34. Defendants later communicated a reversal of this position, however.

35. In the interim, an additional \$50,000 to tenant became due, thereby totaling a \$100,000 reimbursement due to Treasure Hunt.

36. Defendants are continuing to delay and to hold these funds without justification and without a good-faith basis with which to do so.

37. Moreover, Defendants are continuing to do so despite the existence of a funded, \$4.38 million reserve that they are holding relative to these funds. This highlights the unreasonableness of their delay or of their decision not to release the \$100,000 in funds that are due to Treasure Hunt.

38. Defendants' actions and inactions have—because of the extreme and unwarranted passage of time—now caused a potential default situation with this tenant.

39. Defendants' holding of and refusal to release and/or delay in releasing these funds—despite KeyBank's prior representation to Plaintiffs that it would issue a \$50,000 check for this purpose—is causing damage to Plaintiffs in the form, *inter alia*, of harm to their reputation and business relationship with Treasure Hunt and also in the form of harm to their ability to maintain ongoing operation of the shopping centers at-issue.

The Threatened JC Penney Sweep Event

40. Defendants additionally, in their servicing of the Loan Agreement, have threatened the Borrowers with an unwarranted and punitive “cash sweep” action by Defendants, referred to as the “JC Penney Sweep” event. Without a legitimate basis to do so, and in contravention of principles of good faith and fair dealing in contract, Defendants have proposed taking an extreme and outrageous “cash sweep” action that would deprive Plaintiffs of funds necessary for the operation and continued vitality of the shopping centers.

41. In this instance, Plaintiffs worked in cooperation with then-existing tenant JC Penney, in connection with JC Penney's bankruptcy, to keep JC Penney in place as a rent-paying tenant and shopping center occupant for as long as possible. This permitted JC Penney to remain open within the shopping center beyond original projections, and, indeed, all the way up to October 18, 2020. JC Penney is now in the process of transitioning out of its leased tenant space; and—importantly, and in connection with this—Plaintiffs have arranged for a substitute tenant to take JC Penney's place after JC Penney's tenancy terminates and it vacates the shopping center.

42. These arrangements for seamless transition to a substitute tenant further the core purposes of the Loan Agreement, which include keeping storefronts within the shopping centers

occupied by rent-paying tenants, the avoidance of vacancies, and the facilitation of rent payments in furtherance of ongoing operation of the shopping centers as a going concern.

43. In lieu of acting in good faith to assist in facilitating these arrangements, Defendants have—instead—threatened to use JC Penney’s situation as an excuse to invoke a punitive Loan Agreement measure through which Defendants would “sweep” working capital away from Plaintiffs and the shopping centers, thereby effectively lining Defendants’ pockets in the short term but causing the shopping centers to potentially fail as a result.

44. Such a sweep would deprive Plaintiffs of the working capital necessary to keep the shopping centers open as a going concern and would otherwise jeopardize the ability of the shopping centers to operate as a going concern.

45. Defendants’ threats to do so—in the midst of a global pandemic and financial crisis—create additional uncertainty to the detriment of the Borrowers.

46. Moreover, Defendants’ threats to do so are wholly unjustified and unwarranted where, as here, Defendants have continued to receive all payments due and owing under the Loan Agreement and where, as here, a substitute tenant has been lined up to move into JC Penney’s place.

47. Plaintiffs’ negotiations with the substitute tenant for JC Penney have been ongoing since at least the summer of 2020 and, to date, a signed letter of intent (LOI) has been reached with that substitute tenant, agreement has been reached on all material terms, and a draft lease and final lease negotiations are well underway. The seamless substitution of this new tenant for JC Penney inures to the benefit of all involved by providing for replacement occupancy within the shopping

center and continued stability to the loan, with new and sustained income that is, in fact, on even better economic terms than that which was being received from JC Penney.

48. The foregoing tenant substitution for JC Penney thereby eliminates the need for a draconian and punitive measure such as a cash sweep.

49. Conversely, implementation of such a cash-sweep action would cause immediate and irreparable damage to Plaintiffs' continued operation of the shopping centers and, relatedly, would have damaging and chilling effects upon Plaintiffs' business relationships with its tenants and prospective tenants.

The KeyBank Lease Extension

50. One of Plaintiffs' tenants is a branch of KeyBank, although, upon information and belief, the division or department of KeyBank that Plaintiffs' are dealing with as a tenant is a different division or department of KeyBank than that which controls servicing of the Loan Agreement. In this regard, the KeyBank branch tenant is a tenant similarly situated to Plaintiffs' other tenants.

51. Plaintiffs and this KeyBank tenant have been—for months—attempting to finalize a lease-extension transaction.

52. This transaction will further the central purpose of the Loan Agreement, which is to provide for ongoing shopping mall operations and continued tenancy in support thereof.

53. Defendants, however have frustrated—and continue to frustrate—this lease extension through extensive and wholly-unjustified delays and/or refusals with respect to granting approvals for the lease-extension transaction. Defendants' delays and inaction on this issue has now dragged on since, at least, the summer of 2020.

54. Here again, Defendants are—without any justification or rational basis for their actions—causing damage to Plaintiffs in the form, *inter alia*, of harm to their reputation and business relationship with the KeyBank branch tenant and also in the form of harm to their ability to maintain ongoing operation of the shopping centers at-issue.

Additional Tenant Interference and Bad Faith Conduct

55. In addition to the extensive and wholly-unjustified delays and/or refusals relating to Plaintiffs' maintenance of tenants set forth above, Defendants have engaged in similar such unjustified delays and/or refusals affecting Plaintiffs' business relationships with other tenants, tenant-related payments, and leases as well.

56. Defendants' other actions include, but are not limited to, actions affecting tenant Valvoline and approvals of leasing arrangements for this tenant. Just as with the KeyBank branch tenant situation described in the preceding section, Plaintiffs have been trying to finalize a transaction with tenant Valvoline for nearly or approximately one year. Indeed, Plaintiffs' correspondence with Defendant KeyBank on this issue dates back to, at least, October 31, 2019.

57. Plaintiffs have been diligent, over the course of the past year, in responding to all inquiries and requests for information from Defendants and otherwise trying to move the process forward, but Defendants' slowness to approve or failures to approve or other instances of inaction with respect to Valvoline have delayed and frustrated what should be a straightforward tenant transaction that would inure to the benefit of all parties to the Loan Agreement, including the Defendants themselves. As with the other instances identified herein, the delays have become extreme and damaging.

58. Defendants' other actions also include, but are not limited to, actions affecting a ground lessor, Kroger, and approvals of leasing arrangements with Kroger. Pursuant to a lease

that is critical to the shopping center's operation, Borrowers lease ground with improvements thereon from Kroger, and the Borrowers, in turn, lease space in the improvements to shopping center tenants. Borrowers secured an amendment to the ground lease that is highly beneficial to the Defendants themselves, as well as to the Borrowers, because it extends the term of the Borrowers' lease from Kroger and further provides for an option to purchase this leased land.

59. The Kroger ground lease amendment described in the prior paragraph was, in fact, strongly encouraged by those on the lender side of the Loan Agreement—the original B noteholder, in particular—because of the amendment's beneficial nature and because it provides a sound means of addressing lender-side concerns that a un-extended Kroger ground lease would be close to expiration when the time comes to refinance the loan.

60. As with the other instances identified herein, Plaintiffs have been diligent, over the course of months, in responding to all inquiries and requests for information from Defendants and otherwise trying to move the process forward. But, here again, Defendants' slowness to approve or failures to approve or other instances of inaction with respect to the Kroger ground lease amendment have delayed and frustrated what should be a straightforward transaction that would inure to the benefit of all parties to the Loan Agreement, including, as noted, to the benefit of the Defendants themselves. Here, Defendants' approval delay and inaction is simply nonsensical and damaging.

The \$4.38 Million Rollover Reserve

61. Defendants hold a \$4.38 million rollover reserve in connection with their servicing of the Loan Agreement.

62. This rollover reserve is for tenant improvement and leasing commission obligations incurred by Borrower, and is capped at \$5 million—meaning that it is currently funded to near-maximum levels.

63. This rollover reserve could be available, *inter alia*, in the event that COVID-19 circumstances cause shortfalls with respect to funds available for monthly operating expenses.

64. The existence of this rollover reserve, and its sizable amount, render Defendants' actions all the more unreasonable and unjustified with respect to Defendants' delays and/or refusals affecting Plaintiffs' business relationships with other tenants, tenant-related payments, and leases.

Additional Threats Made in Bad Faith

65. Defendants additionally, in their servicing of the Loan Agreement, have threatened the Borrowers with another unwarranted and punitive “cash sweep” action by Defendants, referred to as a “Debt Service Coverage Ratio”—or “DSCR”—event. Similar to the unwarranted and punitive cash sweep event threatened with respect to JC Penney, this DSCR cash sweep event is permissible only where the DSCR ratio for the trailing three month period drops below a certain ratio threshold. Here, that financial metric triggering threshold has either not been crossed or was only barely and temporarily crossed during a portion of the COVID-19 pandemic. Notwithstanding the foregoing, without a legitimate basis to do so and in contravention of principles of good faith and fair dealing in contract, Defendants have still threatened and proposed taking an extreme and outrageous “cash sweep” action that would deprive Plaintiffs of funds necessary for the operation and continued vitality of the shopping centers.

66. Defendants' threats to do so—in the midst of a global pandemic and financial crisis—create additional uncertainty to the detriment of the Borrowers, and such actions would jeopardize the ability of the shopping centers to operate as a going concern.

COUNT I:

BREACH OF CONTRACT – DUTY OF GOOD FAITH AND FAIR DEALING

67. Plaintiffs hereby incorporate all preceding paragraphs of this Complaint by reference as if fully set forth and repeated herein.

68. Defendants KeyBank and Midland, in their respective roles as Master Servicer and Special Servicer to the Loan Agreement, serve as parties to the Loan Agreement and jointly exercise extensive control over the Loan Agreement and its application and administration.

69. Defendants, working together, exercise particular control over the Loan Agreement with respect to how it is applied and administered vis-a-vis the Borrowers/Plaintiffs.

70. Defendants' decisions that are made under the umbrella of the Loan Agreement directly affect Plaintiffs, including, *inter alia*, Plaintiffs' abilities to continue to operate the shopping centers involved and Plaintiffs' relationships with tenant stores and others.

71. As with any contract, the Loan Agreement includes an implied duty of good faith and fair dealing.

72. Defendants owe an ongoing duty of good faith and fair dealing to Plaintiffs.

73. Pursuant to this duty, Defendants have obligations to avoid actions that, *inter alia*, tend to frustrate the purpose of the Loan Agreement and/or that work to deprive the Plaintiffs of the intended object of the Loan Agreement.

74. Here, the essential and core purpose of the Loan Agreement is to permit the Plaintiffs to operate the shopping centers involved as a going concern. The ongoing operation of the shopping centers provides economic benefits to all involved—the Plaintiffs, the non-party tenants, and the Defendants.

75. Creation of the “win-win” situation that occurs for Plaintiffs and Defendants via continued, ongoing operation of the shopping centers as a going concern is the intent of the Loan Agreement and is the intended object of the Loan Agreement.

76. Consistent with the foregoing, the benefits to Defendants under the Loan Agreement result from the maintenance of healthy operations and the ongoing returns on the loan that are thus generated.

77. Conversely, the purpose and object of the Loan Agreement is *not* to provide a mechanism for the Defendants to make a quick grab for the shopping centers or for Plaintiffs’ assets through the exercise of punitive measures, such as a cash sweep, or through the exercise of administrative or loan-servicing decisions that intentionally cripple ongoing operations and/or ongoing tenant relationships and prospective relationships. Any such mechanisms exist to provide a reasonable measure of security for the loan but do not exist so that they can be unreasonably applied in order to intentionally frustrate the Loan Agreement and its core purpose of enabling ongoing operations of the shopping centers.

78. Here, despite the global COVID-19 pandemic and its unprecedented effects upon retail shopping centers, Plaintiffs have timely made all payments due under the Loan Agreement and have, to date, continued to operate the shopping centers involved and have continued to acquire and retain tenants in furtherance of such operations.

79. Nevertheless, Defendants have breached—and engage in ongoing breaches of—their duties of good faith and fair dealing under the contract. Defendants have done so by causing wholly-unjustified, unreasonable, and unwarranted delays and/or refusals affecting Plaintiffs' business relationships with other tenants, tenant-related payments, and leases as well.

80. This includes, but is not limited to, the Treasure Hunt, KeyBank, Valvoline, and Kroger relationships set forth above and the threatened JC Penney Sweep event set forth above.

81. Defendants' conduct constitutes breach of contract and, specifically, breach of the duty of good faith and fair dealing. This is true both with respect to individual actions taken alone pertaining to the Treasure Hunt, KeyBank, Valvoline, and Kroger relationships set forth herein and also with respect to a collective assessment of Defendants' overall conduct and actions toward Plaintiffs.

82. Plaintiffs have been damaged by Defendant's breaches.

WHEREFORE, Plaintiffs request that Defendants be held liable for breach of contract based upon breach of the duty of good faith and fair dealing, and that this honorable Court enter judgment against Defendants and in favor of Plaintiffs consistent with the Prayer for Relief herein below.

COUNT II:

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

83. Plaintiffs hereby incorporate all preceding paragraphs of this Complaint by reference as if fully set forth and repeated herein.

84. Plaintiffs specifically incorporate all of the paragraphs of Count I, above, as if fully set forth and repeated herein.

85. Plaintiffs, through their operation of the shopping centers, have ongoing business relationships and prospective business relationships with tenants, prospective tenants, and others.

86. The acquisition and retention of tenants, and the continuation and expansion of these business relationships, is strongly affected by the health or perceived health of the shopping centers involved and by the reputational trust that Plaintiffs build and foster with the shopping centers' tenants.

87. Defendants' actions that are alleged to have been in breach of their duties of good faith and fair dealing have additionally had the effect of damaging Plaintiffs' business relationships with the shopping centers' tenants and prospective tenants. This is so, regardless and independent of whether or not such actions are ultimately held to be breaches in Count I.

88. This includes, but is not limited to, the Treasure Hunt, KeyBank, Valvoline, and Kroger relationships set forth above and the threatened JC Penney Sweep event set forth above.

89. Indeed, with respect to Treasure Hunt, Defendants' actions and inactions have caused a potential default situation with this tenant.

90. Likewise, with respect to the KeyBank branch tenant, Defendants' actions and inactions have, upon information and belief, caused the tenant to escalate the lease negotiations to higher levels within the company because of the delays that Defendants are causing.

91. Upon information and belief, Defendants' actions have caused non-party tenants and prospective tenants to not enter into and/or to not extend and/or to contemplate exiting tenancies with Plaintiffs at the affected shopping centers.

92. Upon information and belief, Defendants' actions have caused non-party tenants and prospective tenants to otherwise seek to limit or change their business relationships with Plaintiffs to Plaintiffs' detriment.

93. Defendants, in taking these actions, were fully aware and knew that their intentional course of conduct with respect to the Loan Agreement and with respect to Plaintiffs could and would have the effect of souring and chilling tenant business relationships.

94. In that regard, Defendants' intentional, bad faith conduct with respect to the Loan Agreement has had the side effect of maliciously interfering with Plaintiffs' business relationships, and the likelihood of this interference was knowable and known by Defendants.

95. This constitutes tortious interference with business relations.

96. Plaintiffs have been damaged by Defendant's actions, including reputationally and otherwise.

WHEREFORE, Plaintiffs request that Defendants be held liable for tortious interference with Plaintiffs' business relations and that this honorable Court enter judgment against Defendants and in favor of Plaintiffs consistent with the Prayer for Relief herein below.

COUNT III:

DECLARATORY JUDGMENT AND RELATED INJUNCTIVE RELIEF

97. Plaintiffs hereby incorporate all preceding paragraphs of this Complaint by reference as if fully set forth and repeated herein.

98. Consistent with the events set forth in Counts I and II, above, Plaintiffs seek declaratory judgment that Defendants have breached the Loan Agreement through their refusal to

release the Treasure Hunt reimbursements, through their refusal or delays with respect to the KeyBank branch lease, and through their other various refusals and delays.

99. In connection therewith, Plaintiffs intend to seek a temporary restraining order and preliminary injunctive relief barring Defendants from implementing the threatened JC Penney Sweep event, and Plaintiffs further seek permanent injunctive relief concerning the same. Specifically, with respect to this item, Plaintiffs seek injunctive relief as follows: Defendants shall be enjoined from implementing any “cash sweep” action under the Loan Agreement pertaining or related to, or considered to be triggered by, JC Penney or JC Penney’s lease and/or tenancy as they pertain to that Loan Agreement.

100. In connection therewith, Plaintiffs seek injunctive relief compelling Defendants to timely release the Treasure Hunt reimbursement.

101. In connection therewith, Plaintiffs seek injunctive relief compelling Defendants to timely approve the KeyBank lease extension.

102. In connection therewith, Plaintiffs seek any other such injunctive relief as is deemed just and proper with respect to any of the issues identified in this Complaint, including those involving Plaintiffs’ dealings with Treasure Hunt, KeyBank, Valvoline, Kroger, and JC Penney and/or its replacement tenant.

103. As noted, Defendants’ actions set forth herein—involving unjustified and unwarranted positions with respect to the servicing of the Loan Agreement and related delays, actions, and inactions—constitute intentional, bad faith conduct under the Loan Agreement. Defendants knew or could have reasonably foreseen that their intentional course of conduct with respect to the Loan Agreement and with respect to Plaintiffs could and would have the effects of

souring and chilling tenant business relationships and otherwise maliciously interfering with Plaintiffs' business relationships.

104. Accordingly, as a further and additional measure of protection against Defendants' unwarranted and unjustified conduct, and as a punitive sanction or other sanction for Defendants' bad faith and/or unclean hands, Plaintiffs further seek injunctive relief making the \$4.38 million rollover reserve currently held by Defendants available for Plaintiffs' immediate use. Defendants' actions with respect to the Loan Agreement, as detailed above, have demonstrated a mishandling of funds presently under their control and, in that regard, grant of relief with respect to control of the rollover reserve to the Plaintiffs will ensure that those funds are properly preserved and/or used for the benefit of the parties to the Loan Agreement and, concomitantly, will remove those funds from Defendants' control and from Defendants' mishandling.

WHEREFORE, Plaintiffs request that declaratory judgment and injunctive relief be entered consistent with the Prayer for Relief herein below.

PRAYER FOR RELIEF

105. Plaintiffs hereby incorporate all preceding paragraphs of this Complaint by reference as if fully set forth and repeated herein, specifically including the foregoing enumerated Counts.

WHEREFORE, Plaintiffs requests that Defendants be held liable on all Counts and that this honorable Court enter judgment against Defendants and in favor of Plaintiffs, including:

- a. holding Defendants liable for breach of contract;
- b. holding Defendants liable for tortious interference with business relations;

c. awarding Plaintiffs actual and/or compensatory monetary damages for these liability findings;

d. in the alternative, awarding nominal damages for the same;

e. entering declaratory judgment for Plaintiffs with respect to the release of Treasure Hunt reimbursement payments, and ordering injunctive relief compelling the same;

f. entering declaratory judgement for Plaintiffs with respect to the threatened JC Penney Sweep event, and ordering injunctive relief preventing Defendants from performing that sweep;

g. entering declaratory judgment for Plaintiffs with respect to approval of the KeyBank branch lease, and ordering injunctive relief compelling approval of the same;

h. entering declaratory judgment for Plaintiffs with respect to additional tenant-related or loan-servicing issues of bad faith proven at trial, and ordering injunctive relief to correct the same;

i. entering an order releasing the \$4.38 million in rollover funds to Plaintiffs' use in furtherance of the foregoing and as a sanction for Defendants' bad faith and/or unclean hands;

j. awarding Plaintiffs any applicable pre-judgment and post-judgment interest on monetary amounts awarded, to the extent permitted by law;

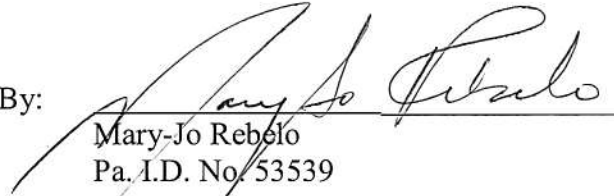
k. awarding Plaintiffs attorneys' fees and costs, to the extent permitted by law;
and

1. awarding Plaintiffs any additional and further relief as permitted by law and as deemed just and proper by the Court.

Dated: October 23, 2020

BURNS WHITE LLC

By:



Mary-Jo Rebelo
Pa. I.D. No. 53539
Jason J. Cervone
Pa. I.D. No. 91173
Thomas M. Pohl
Pa. I.D. No. 208080

BURNS WHITE LLC

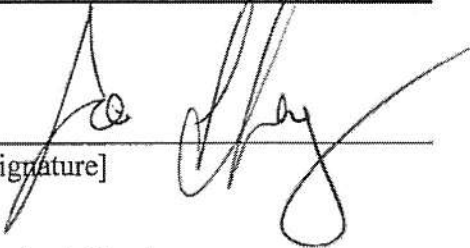
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jjcervone@burnswhite.com
tmpohl@burnswhite.com

Counsel for Plaintiffs

VERIFICATION

I, the undersigned individual, state on behalf of Gumberg Associates – Chapel Square, under the penalties provided by 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, that the averments contained in the foregoing Complaint are true and correct and/or are true and correct to the best of my knowledge, information, and belief. I further certify that I am authorized to make this Verification on Gumberg Associates – Chapel Square’s behalf.

**For Gumberg Associates – Chapel Square,
a Pennsylvania limited partnership:**


[Signature]

Ira J. Gumberg
[Printed Name]

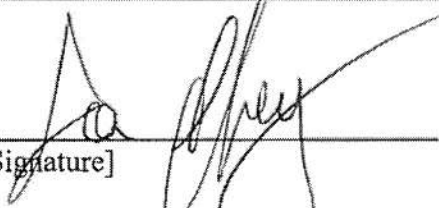
President, Gumberg Chapel Square Holdings, LLC,
[Title] its general partner

10-23-2020
[Date]

VERIFICATION

I, the undersigned individual, state on behalf of Waterworks Phase II, under the penalties provided by 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, that the averments contained in the foregoing Complaint are true and correct and/or are true and correct to the best of my knowledge, information, and belief. I further certify that I am authorized to make this Verification on Waterworks Phase II's behalf.

**For Waterworks Phase II,
a Pennsylvania limited partnership:**


[Signature]

Ira J. Gumberg
[Printed Name]

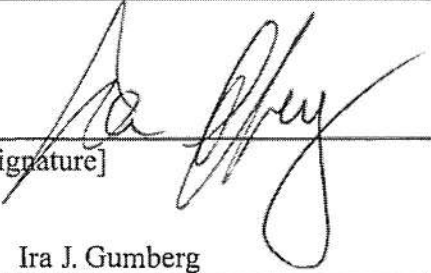
President, Gumberg Waterworks Phase II Holdings, LLC,
[Title] its general partner

10-23-2020
[Date]

VERIFICATION

I, the undersigned individual, state on behalf of WGW Associates, under the penalties provided by 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, that the averments contained in the foregoing Complaint are true and correct and/or are true and correct to the best of my knowledge, information, and belief. I further certify that I am authorized to make this Verification on WGW Associates' behalf.

For WGW Associates,
a Pennsylvania limited partnership:


[Signature]

Ira J. Gumberg
[Printed Name]

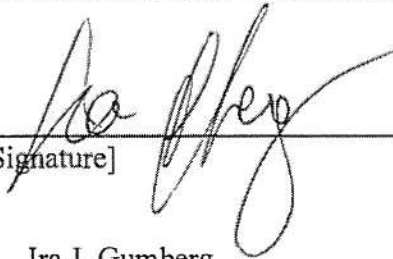
President, Gumberg WGW Holdings, LLC,
[Title] its general partner

10-23-2020
[Date]

VERIFICATION

I, the undersigned individual, state on behalf of Northtowne Associates, under the penalties provided by 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, that the averments contained in the foregoing Complaint are true and correct and/or are true and correct to the best of my knowledge, information, and belief. I further certify that I am authorized to make this Verification on Northtowne Associates' behalf.

For Northtowne Associates,
a Pennsylvania limited partnership:



[Signature]

Ira J. Gumberg

[Printed Name]

President, Gumberg Northtowne Holdings, LLC,

[Title] its general partner

10-23-2020

[Date]

VERIFICATION

I, the undersigned individual, state on behalf of CANH Associates, under the penalties provided by 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, that the averments contained in the foregoing Complaint are true and correct and/or are true and correct to the best of my knowledge, information, and belief. I further certify that I am authorized to make this Verification on CANH Associates' behalf.

For CANH Associates,
a Pennsylvania limited partnership:


[Signature]

Ira J. Gumberg
[Printed Name]

President, Gumberg North Huntingdon Square Holdings, LLC,
[Title] its general partner

10-23-2020
[Date]

EXHIBIT 1

LOAN AGREEMENT

Dated as of April 1, 2014

Among

**THE ENTITIES SET FORTH ON SCHEDULE I
ATTACHED HERETO,
collectively, as Borrower,**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
as Note A-1 Lender,**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
as Note A-2 Lender**

and

**COLFIN CORAM PENN RETAIL FUNDING, LLC,
as Note B Lender,**

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of April 1, 2014 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**"), among **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179 ("**Note A-1 Lender**"), **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179 ("**Note A-2 Lender**" and, together with Note A-1 Lender, each a "**Note A Lender**" and collectively, "**Note A Lenders**") and **COLFIN CORAM PENN RETAIL FUNDING, LLC**, a Delaware limited liability company, having an address at c/o Colony Financial, Inc., 2450 Broadway, Sixth Floor, Santa Monica, California 90404 ("**Note B Lender**" and, together with Note A Lender, each a "**Lender**" and collectively, "**Lenders**"), and **THE ENTITIES SET FORTH ON SCHEDULE I ATTACHED HERETO**, each having an address at 1051 Brinton Road, Pittsburgh, Pennsylvania 15221 (each, an "**Individual Borrower**" and, collectively, "**Borrower**").

WITNESSETH:

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lenders;
and

WHEREAS, Lenders are willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

WHEREAS, Agent is willing to act as agent on behalf of Lenders, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lenders and Agent serving as agent hereunder and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I - 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:

"**Accrual Period**" shall mean the period commencing on and including the first (1st) day of each calendar month during the term of the Loan and ending on and including the final calendar date of such calendar month; however, the initial Accrual Period shall commence on and include the Closing Date and shall end on and include the final calendar date of the calendar month in which the Closing Date occurs.

"**Additional Insolvency Opinion**" shall mean any subsequent Insolvency Opinion.

“Affected Area” shall mean that portion of any Individual Property for which a Restoration is permitted or required hereunder.

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person or is a director or officer of such Person or of an Affiliate of such Person.

“Affiliated Manager” shall mean any Manager in which Borrower, Principal, or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

“Agent” shall mean Note A-1 Lender, together with its successors and assigns.

“Allocated Loan Amount” shall mean for an Individual Property the amount specified as such on Schedule III hereto.

“Annual Budget” shall mean the operating budget, including all planned Capital Expenditures, for each Individual Property prepared by Borrower in accordance with Section 5.1.11(d) hereof for the applicable Fiscal Year or other period.

“Approved Annual Budget” shall have the meaning set forth in Section 5.1.11(d) hereof.

“Approved Replacement Guarantor” shall mean an Affiliate of J.J. Gumberg Co., (i) who meets the requirements of a Qualified Transferee, (ii) who has and at all times shall maintain a Net Worth of at least \$25,000,000.00 and Liquid Assets of at least \$2,000,000.00, in each case as reasonably determined by Agent; and (iii) if a Securitization has occurred, for whom Agent has received a written confirmation from the Rating Agencies that the replacement of the Guarantor shall not result in a downgrade, withdrawal or qualification of the ratings then assigned to the Securities from each applicable Rating Agency; and (iv) who Controls Borrower and owns at least a 51% direct or indirect interest in Borrower.

“Assignment of Management Agreement” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees dated as of the date hereof among Agent, 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 any Individual Property.

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (c) 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 Code or any other Federal or state bankruptcy or insolvency law; (d) 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 any Individual Property; or (e) such Person making an assignment for the benefit of creditors, or admitting, in any legal proceeding, its insolvency or inability to pay its debts as they become due.

"Bankruptcy Code" shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors' rights or any other Federal or state bankruptcy or insolvency law.

"Bankruptcy Trigger Event" shall mean any Bankruptcy Action with respect to Borrower.

"Borrower" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, or the place of business of the trustee under a Securitization (or, if no Securitization has occurred, the place of business of Agent), or any Servicer or the financial institution that maintains any collection account for or on behalf of any Servicer or any Reserve Funds or the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business.

"CANH" shall mean CANH Associates, a Pennsylvania limited partnership.

"Capital Expenditures" shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

"Cash Management Account" shall have the meaning set forth in Section 2.7.2 hereof.

"Cash Management Agent" shall mean Wells Fargo Bank, N.A., or any successor Eligible Institution acting as "Account Agent" under the Cash Management Agreement.

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

"Cash Sweep Event" shall mean the occurrence of: (a) an Event of Default; (b) any Bankruptcy Action of Borrower or Manager; (c) a DSCR Trigger Event; or (d) a Tenant Trigger Event.

"Cash Sweep Event Cure" shall mean (a) if the Cash Sweep Event is caused solely by the occurrence of a DSCR Trigger Event, the achievement of a Debt Service Coverage Ratio, as measured on the last day of each calendar quarter, of 1.10 to 1.00 or greater on a trailing three (3) month period for two (2) consecutive calendar quarters, (b) if the Cash Sweep Event is caused

solely by an Event of Default, the acceptance by Agent of a cure of such Event of Default (which cure Agent may accept in Agent's reasonable discretion, provided, however, that if (x) Agent has applied for the appointment of a receiver pursuant to Section 7.1(g) of any Mortgage, (y) Agent shall have declared the entire unpaid Debt to be immediately due and payable, or (z) Agent shall have commenced a foreclosure action pursuant to Section 7.1(b) of any Mortgage, Agent is not obligated to accept such cure and may reject or accept such cure in Agent's sole and absolute discretion), (c) if the Cash Sweep Event is caused solely by a Bankruptcy Action of Manager, if Borrower replaces the Manager with a Qualified Manager under a Replacement Management Agreement within sixty (60) days after such Bankruptcy Action, (d) if the Cash Sweep Event is caused solely by a Tenant Trigger Event, the occurrence of the applicable Tenant Trigger Event Cure or (e) if the Cash Sweep Event is caused solely by the occurrence of a Bankruptcy Action involving the filing of an involuntary petition against Borrower, and Borrower, Guarantor or their respective Affiliates do not collude with, or otherwise assist or solicit or cause to be solicited petitioning creditors for any insolvency petition against Borrower, if such involuntary petition shall be discharged or dismissed; provided that, in Agent's opinion, such petition is discharged or dismissed without any adverse consequences to the Loan or the Property; provided, however, that, such Cash Sweep Event Cure set forth in this definition shall be subject to the following conditions, (i) no Event of Default shall have occurred and be continuing under this Agreement or any of the other Loan Documents, (ii) a Cash Sweep Event Cure may occur no more than a total of two (2) times in the aggregate during the term of the Loan, and (iii) Borrower shall have paid all of Agent's and Lenders' reasonable expenses incurred in connection with such Cash Sweep Event Cure including, reasonable attorney's fees and expenses. Borrower shall have no right to cure a Cash Sweep Event caused by a Bankruptcy Action of Borrower.

"Cash Sweep Period" shall mean each period commencing on the occurrence of a Cash Sweep Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Sweep Event Cure, or (b) until 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 have the meaning set forth in Section 6.2 hereof.

"Casualty Consultant" shall have the meaning set forth in Section 6.4(b)(iii) hereof.

"Casualty Retainage" shall have the meaning set forth in Section 6.4(b)(iv) hereof.

"Chapel Square" shall mean Gumberg Associates-Chapel Square, a Pennsylvania limited partnership.

"Closing Date" shall mean the date of the funding of the Loan.

"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.

“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 any Individual Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Individual Property or any part thereof.

“Condemnation Proceeds” shall have the meaning set forth in Section 6.4(b) hereof.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. **“Controlled”** and **“Controlling”** shall have correlative meanings.

“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 (including any Yield Maintenance Premium and any Yield Maintenance Default Premium) due to Agent and Lenders in respect of the Loan under the Note, this Agreement, each Mortgage or any other Loan Document.

“Debt Service” shall mean, with respect to any particular period of time, the aggregate scheduled Note A Monthly Debt Service Payment Amount and Note B Monthly Debt Service Payment Amount.

“Debt Service Coverage Ratio” shall mean a ratio for the applicable period, determined on a cash flow basis (except as provided below) consistently applied, in which:

(a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) as of the end of such applicable period as set forth in the financial statements required hereunder, without deduction for (i) actual management fees incurred in connection with the operation of the Properties for such period, or (ii) amounts paid to the Reserve Funds for such period, less with respect to such period, (A) management fees equal to the greater of (1) assumed management fees of 3.90% of Gross Income from Operations and (2) the actual management fees incurred, (B) annual Replacement Reserve Fund contributions equal to \$215,655.00, and (C) annual Rollover Reserve Fund contributions equal to \$1,000,000.00; and

(b) the denominator is the aggregate amount of Debt Service for 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 (a) the Maximum Legal Rate or (b) five percent (5%) above the Interest Rate.

“Disclosure Documents” shall mean any written materials used or provided to any prospective investors and/or Rating Agencies in connection with any public offering or private placement of Securities in a Securitization, including, without limitation, a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular or collateral term sheet, in each case in preliminary or final form, and in each case, including any amendments or supplements thereto.

“DSCR Trigger Event” shall mean, that as of the date of determination, the Debt Service Coverage Ratio based on the trailing three (3) month period immediately preceding the date of such determination is less than 1.05 to 1.00.

“Elder-Beerman” shall mean The Bon-Ton Department Stores, Inc., a Pennsylvania corporation (as successor-in-interest by merger to The Elder-Beerman Stores Corp., an Ohio corporation), and any Elder-Beerman Replacement Tenant.

“Elder-Beerman Lease” shall mean the Lease dated June 8, 1984 entered into by and between Elder-Beerman, as tenant, and Northtowne, as landlord, as the same may have been modified, amended and/or assigned from time to time.

“Elder-Beerman Renewal Criteria” shall mean Agent shall have received (i) evidence reasonably satisfactory to Agent that Elder-Beerman has renewed the Elder-Beerman Lease in accordance with the terms and conditions set forth in the Elder-Beerman Lease and (ii) an updated tenant estoppel certificate from Elder-Beerman confirming, among other things, (A) such renewal and reflecting the terms of any such renewal, (B) that the Elder-Beerman Lease is in full force and effect, (C) that Elder-Beerman is in physical occupancy of the space covered by the Elder-Beerman Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Northtowne), and (D) that to Elder-Beerman’s knowledge, there is no default by Northtowne under the Elder-Beerman Lease.

“Elder-Beerman Replacement Lease” or **“Elder-Beerman Replacement Leases”** shall mean a Lease or Leases entered into with one or more Elder-Beerman Replacement Tenants approved by Agent in accordance with Section 5.1.20 of this Agreement.

“Elder-Beerman Replacement Lease Criteria” shall mean satisfaction of the following conditions with respect to all of the space demised to Elder-Beerman under the Elder-Beerman Lease:

(i) Northtowne shall have entered into one or more Elder-Beerman Replacement Leases;

(ii) Each Elder-Beerman Replacement Tenant shall be in physical occupancy of the space covered by the applicable Elder-Beerman Replacement Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Borrower); and

(iii) Borrower shall provide Agent with the following:

(A) a copy of each executed Elder-Beerman Replacement Lease;

(B) a tenant estoppel certificate in form and substance reasonably satisfactory to Agent executed by each Elder-Beerman Replacement Tenant which confirms, among other things, that (aa) each Elder-Beerman Replacement Lease is in full force and effect, (bb) to such Elder-Beerman Replacement Tenant's knowledge, there is no default under any Elder-Beerman Replacement Lease, and (cc) each Elder-Beerman Replacement Tenant is in physical occupancy of its space and paying full contractual rent;

(C) upon request of Agent, a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Agent executed by each Elder-Beerman Replacement Tenant and Agent;

(D) reasonably satisfactory evidence that Northtowne has performed and paid for all tenant improvements required to be performed or paid by Northtowne pursuant to the terms of such Elder-Beerman Replacement Tenant and that there are no unpaid leasing commissions associated with such Elder-Beerman Replacement Tenant; and

(E) an updated rent roll.

"Elder-Beerman Replacement Tenant" or "Elder-Beerman Replacement Tenants" shall mean a new Tenant or Tenants at the Property approved by Agent (which approval shall not be unreasonably withheld, conditioned or delayed) and leasing all or part of the space presently occupied by Elder-Beerman pursuant to the Elder-Beerman Lease.

"Elder-Beerman Trigger Event" shall mean the occurrence of any of the following: (i) Borrower shall fail to satisfy the Elder-Beerman Renewal Criteria on or before the notice period required for renewal by the Elder-Beerman Lease or (ii) Elder-Beerman "goes dark", vacates or abandons its premises at the Property.

"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 a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, 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 \$50,000,000.00 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

"Eligible Institution" shall mean JPMorgan Chase Bank, National Association or 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 “Aa3” by Moody’s).

“**Embargoed Person**” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), 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 including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by Lenders is in violation of law.

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

“**Environmental Law**” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. Environmental Law includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. Environmental Law also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any Governmental Authority or other Person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; or relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

“**Environmental Liens**” shall have the meaning set forth in Section 5.1.19 hereof.

“**Environmental Report**” shall have the meaning set forth in Section 4.1.37 hereof.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“Event of Default” shall have the meaning set forth in Section 8.1(a) hereof.

“Excess Cash Flow” shall have the meaning set forth in the Cash Management Agreement.

“Excess Cash Flow Reserve Account” shall have the meaning set forth in Section 7.5 hereof.

“Excess Cash Flow Reserve Fund” shall have the meaning set forth in Section 7.5 hereof.

“Extraordinary Expense” shall have the meaning set forth in Section 5.1.11(e) 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 of the Loan.

“Fitch” shall mean Fitch, Inc.

“Free Rent Deposit” shall have the meaning set forth in Section 7.6.1 hereof.

“Free Rent Reserve Account” shall have the meaning set forth in Section 7.6.1 hereof.

“Free Rent Reserve Fund” shall have the meaning set forth in Section 7.6.1 hereof.

“GAAP” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“Giant Eagle” shall mean Giant Eagle, Inc., a Pennsylvania corporation and, as applicable, any Giant Eagle (North Huntingdon) Replacement Tenant or any Giant Eagle (Waterworks) Replacement Tenant.

“Giant Eagle (North Huntingdon) Lease” shall mean the Lease dated July 5, 1994 entered into by and between Giant Eagle, as tenant, and CANH, as landlord, as the same may have been modified, amended and/or assigned from time to time.

“Giant Eagle (North Huntingdon) Renewal Criteria” shall mean Agent shall have received (i) evidence reasonably satisfactory to Agent that Giant Eagle has renewed the Giant Eagle (North Huntingdon) Lease in accordance with the terms and conditions set forth in the Giant Eagle (North Huntingdon) Lease and (ii) an updated tenant estoppel certificate from Giant Eagle confirming, among other things, (A) such renewal and reflecting the terms of any such renewal, (B) that the Giant Eagle (North Huntingdon) Lease is in full force and effect, (C) that Giant Eagle (North Huntingdon) is in physical occupancy of the space covered by the Giant Eagle (North Huntingdon) Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission

obligations on the part of CANH), and (D) that to Giant Eagle's knowledge, there is no default by CANH under the Giant Eagle (North Huntingdon) Lease.

"Giant Eagle (North Huntingdon) Replacement Lease" or **"Giant Eagle (North Huntingdon) Replacement Leases"** shall mean a Lease or Leases entered into with one or more Giant Eagle (North Huntingdon) Replacement Tenants approved by Agent in accordance with Section 5.1.20 of this Agreement.

"Giant Eagle (North Huntingdon) Replacement Lease Criteria" shall mean satisfaction of the following conditions with respect to all of the space demised to Giant Eagle under the Giant Eagle (North Huntingdon) Lease:

(i) CANH shall have entered into one or more Giant Eagle (North Huntingdon) Replacement Leases;

(ii) Each Giant Eagle (North Huntingdon) Replacement Tenant shall be in physical occupancy of the space covered by the applicable Giant Eagle (North Huntingdon) Replacement Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Borrower); and

(iii) Borrower shall provide Agent with the following:

(A) a copy of each executed Giant Eagle (North Huntingdon) Replacement Lease;

(B) a tenant estoppel certificate in form and substance reasonably satisfactory to Agent executed by each Giant Eagle (North Huntingdon) Replacement Tenant which confirms, among other things, that (aa) each Giant Eagle (North Huntingdon) Replacement Lease is in full force and effect, (bb) to such Giant Eagle (North Huntingdon) Replacement Tenant's knowledge, there is no default under any Giant Eagle (North Huntingdon) Replacement Lease, and (cc) each Giant Eagle (North Huntingdon) Replacement Tenant is in physical occupancy of its space and paying full contractual rent;

(C) upon request of Agent, a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Agent executed by each Giant Eagle (North Huntingdon) Replacement Tenant and Agent;

(D) reasonably satisfactory evidence that CANH has performed and paid for all tenant improvements required to be performed or paid by CANH pursuant to the terms of such Giant Eagle (North Huntingdon) Replacement Tenant and that there are no unpaid leasing commissions associated with such Giant Eagle (North Huntingdon) Replacement Tenant; and

(E) an updated rent roll.

"Giant Eagle (North Huntingdon) Replacement Tenant" or **"Giant Eagle (North Huntingdon) Replacement Tenants"** shall mean a new Tenant or Tenants at the Property approved by Agent (which approval shall not be unreasonably withheld, conditioned or delayed)

and leasing all or part of the space presently occupied by Giant Eagle pursuant to the Giant Eagle (North Huntingdon) Lease.

“Giant Eagle (North Huntingdon) Trigger Event” shall mean the occurrence of any of the following: (i) Borrower shall fail to satisfy the Giant Eagle (North Huntingdon) Renewal Criteria on or before the notice period required for renewal by the Giant Eagle (North Huntingdon) Lease or (ii) Giant Eagle “goes dark”, vacates or abandons its premises subject to the Giant Eagle (North Huntingdon) Lease at the Property.

“Giant Eagle (Waterworks) Lease” shall mean the Lease dated September 1, 1998 entered into by and between Giant Eagle, as tenant, and Waterworks II, as landlord, as the same may have been modified, amended and/or assigned from time to time.

“Giant Eagle (Waterworks) Renewal Criteria” shall mean Agent shall have received (i) evidence reasonably satisfactory to Agent that Giant Eagle has renewed the Giant Eagle (Waterworks) Lease in accordance with the terms and conditions set forth in the Giant Eagle (Waterworks) Lease and (ii) an updated tenant estoppel certificate from Giant Eagle confirming, among other things, (A) such renewal and reflecting the terms of any such renewal, (B) that the Giant Eagle (Waterworks) Lease is in full force and effect, (C) that Giant Eagle is in physical occupancy of the space covered by the Giant Eagle (Waterworks) Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Waterworks II), and (D) that to Giant Eagle’s knowledge, there is no default by Waterworks II under the Giant Eagle (Waterworks) Lease.

“Giant Eagle (Waterworks) Replacement Lease” or **“Giant Eagle (Waterworks) Replacement Leases”** shall mean a Lease or Leases entered into with one or more Giant Eagle (Waterworks) Replacement Tenants approved by Agent in accordance with Section 5.1.20 of this Agreement.

“Giant Eagle (Waterworks) Replacement Lease Criteria” shall mean satisfaction of the following conditions with respect to all of the space demised to Giant Eagle under the Giant Eagle (Waterworks) Lease:

(i) Waterworks II shall have entered into one or more Giant Eagle (Waterworks) Replacement Leases;

(ii) Each Giant Eagle (Waterworks) Replacement Tenant shall be in physical occupancy of the space covered by the applicable Giant Eagle (Waterworks) Replacement Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Borrower); and

(iii) Borrower shall provide Agent with the following:

(A) a copy of each executed Giant Eagle (Waterworks) Replacement Lease;

(B) a tenant estoppel certificate in form and substance reasonably satisfactory to Agent executed by each Giant Eagle (Waterworks) Replacement Tenant which confirms, among other things, that (aa) each Giant Eagle (Waterworks) Replacement Lease is in full force and effect, (bb) to such Giant Eagle (Waterworks) Replacement Tenant's knowledge, there is no default under any Giant Eagle (Waterworks) Replacement Lease, and (cc) each Giant Eagle (Waterworks) Replacement Tenant is in physical occupancy of its space and paying full contractual rent;

(C) upon request of Agent, a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Agent executed by each Giant Eagle (Waterworks) Replacement Tenant and Agent;

(D) reasonably satisfactory evidence that Waterworks II has performed and paid for all tenant improvements required to be performed or paid by Waterworks II pursuant to the terms of such Giant Eagle (Waterworks) Replacement Tenant and that there are no unpaid leasing commissions associated with such Giant Eagle (Waterworks) Replacement Tenant; and

(E) an updated rent roll.

"Giant Eagle (Waterworks) Replacement Tenant" or **"Giant Eagle (Waterworks) Replacement Tenants"** shall mean a new Tenant or Tenants at the Property approved by Agent (which approval shall not be unreasonably withheld, conditioned or delayed) and leasing all or part of the space presently occupied by Giant Eagle pursuant to the Giant Eagle (Waterworks) Lease.

"Giant Eagle (Waterworks) Trigger Event" shall mean the occurrence of any of the following: (i) Borrower shall fail to satisfy the Giant Eagle (Waterworks) Renewal Criteria on or before the notice period required for renewal by the Giant Eagle (Waterworks) Lease or (ii) Giant Eagle "goes dark", vacates or abandons its premises subject to the Giant Eagle (Waterworks) Lease at the Property.

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

"Gross Income from Operations" shall mean, during any period, all sustainable income as reported on the financial statements delivered by Borrower in accordance with this Agreement, computed on a cash accounting basis (except as hereinafter provided below) consistently applied, derived from the ownership and operation of the Properties from whatever source during such period, including, but not limited to, (i) Rents from Tenants that are in occupancy, open for business and paying full contractual rent without right of offset or credit, (ii) utility charges, (iii) escalations, (iv) interest on credit accounts, (v) service fees or charges, (vi) license fees, (vii) parking fees, (viii) rent concessions or credits disbursed by Agent to Borrower from the Free Rent Reserve Fund, (ix) income from vending machines, (x) business interruption or other loss of income or rental insurance proceeds, (xi) other required pass-throughs and (xii) interest on Reserve Accounts, if any, and (ii) amounts of security deposits that are forfeited by Tenants, or duly applied or earned in accordance with the applicable Leases, but excluding (i)

Rents from month-to-month Tenants, Tenants during a free-rent period, or Tenants that are included in any Bankruptcy Action, (ii) sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, (iii) refunds and uncollectible accounts, (iv) sales of furniture, fixtures and equipment, (v) Insurance Proceeds (other than business interruption or other loss of income or rental insurance), (vi) Awards, (vii) unforfeited security deposits, (viii) utility and other similar deposits, (ix) any disbursements to any Individual Borrower from the Reserve Funds, except the Free Rent Reserve Fund and (x) Termination Deposits. Gross income shall not be diminished as a result of the Mortgages or the creation of any intervening estate or interest in the Properties or any part thereof.

“Ground Lease” shall have the meaning set forth in the Waterworks Mortgage.

“Ground Lease Reserve Account” shall have the meaning set forth in Section 7.8.1 hereof.

“Ground Lease Reserve Fund” shall have the meaning set forth in Section 7.8.1 hereof.

“Ground Lessor” shall have the meaning set forth in the Waterworks Mortgage.

“Ground Rent” shall mean all rents and other charges due under the Ground Lease.

“Ground Rent Monthly Payment” shall mean all monthly rent and other charges due under the Ground Lease.

“Guarantor” shall mean Ira J. Gumberg or any Approved Replacement Guarantor.

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

“Hazardous Substances” include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables, explosives, mold, mycotoxins, microbial matter and airborne pathogens (naturally occurring or otherwise), but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purpose of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.

“HFF” shall have the meaning set forth in Section 10.21 hereof.

“Holding Company” or **“Holding Companies”** shall mean, individually and collectively, the following Delaware limited liability companies: Gumberg Chapel Square

Holdings, LLC, Gumberg Waterworks Phase II Holdings, LLC, Gumberg WGW Holdings, LLC, Gumberg North Huntingdon Square Holdings, LLC, and Gumberg Northtowne Holdings, LLC.

“Immediate Repairs” shall mean, collectively, (i) removal of all debris from the Affected Area, (ii) to the extent permitted by applicable Legal Requirements, enclosure of the Affected Area (through fencing or other reasonable method) in a manner sufficient to prevent the public from accessing same, (iii) repair and restoration of any portion of the Affected Area which is required for the use, operation, or support of the remaining portion of the Property (including, without limitation, providing reasonable access to the remaining portion of the Property), (iv) maintaining the Affected Area in a manner that is safe and not dangerous to health or other property and is in compliance with all applicable Legal Requirements in all material respects and (v) commencement of preliminary drawings in connection with any Restoration.

“Improvements” shall have the meaning set forth in the granting clause of the related Mortgage with respect to each Individual Property.

“Indebtedness” of a Person, at a particular date, shall mean the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“Indemnified Liabilities” shall have the meaning set forth in Section 10.13(b) hereof.

“Indemnified Parties” shall mean Agent, each Lender and their respective successors and assigns, (whether or not such successor or assignee is Agent or a Lender), any Affiliate of Agent or Lenders that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of Agent or Lenders that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act of 1933 as amended or Section 20 of the Security Exchange Act of 1934 as amended, any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by the Mortgage is or will have been recorded, any Person who may hold or acquire or will have held a full or partial interest in the Loan secured hereby (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 secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents,

servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other 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 and including, but not limited to any successors by merger, consolidation or acquisition of all or a substantial portion of Agent's or any Lender's assets and business).

"Independent Director" shall mean a natural Person who (a) is not at the time of initial appointment, or at any time while serving in such capacity, and is not, and has never been, and will not while serving as Independent Director be: (i) a stockholder, director (with the exception of serving as the Independent Director of Borrower), officer, employee, partner, member (other than a "special member" or "springing member"), manager, attorney or counsel of Borrower, equity owners of Borrower or Guarantor or any Affiliate of Borrower or Guarantor; (ii) a customer, supplier or other person who derives any of its purchases or revenues from its activities with Borrower or Guarantor, equity owners of Borrower or Guarantor or any Affiliate of Borrower or Guarantor; (iii) a Person Controlling or under common Control with any such stockholder, director, officer, employee, partner, member, manager, attorney, counsel, equity owner, customer, supplier or other Person; or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, manager, attorney, counsel, equity owner, customer, supplier or other Person and (b) has (i) prior experience as an independent director or independent manager for a corporation, a trust or limited liability company whose charter documents required the unanimous consent of all independent directors or independent managers thereof before such corporation, trust or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy and (ii) at least three years of employment experience with one or more nationally-recognized companies that provides, inter alia, professional independent directors or independent managers in the ordinary course of their respective business to issuers of securitization or structured finance instruments, agreements or securities or lenders originating commercial real estate loans for inclusion in securitization or structured finance instruments, agreements or securities (a **"Professional Independent Director"**) and is at all times during his or her service as an Independent Director of Borrower an employee of such a company or companies. A natural Person who satisfies the foregoing definition except for being (or having been) the independent director or independent manager of a "special purpose entity" affiliated with Borrower (provided such affiliate does not or did not own a direct or indirect equity interest in an Borrower) shall not be disqualified from serving as an Independent Director, provided that such natural Person satisfies all other criteria set forth above and that the fees such individual earns from serving as independent director or independent manager of affiliates of Borrower or in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. A natural Person who satisfies the foregoing definition other than subparagraph (a)(ii) shall not be disqualified from serving as an Independent Director of Borrower if such individual is a Professional Independent Director and such individual complies with the requirements of the previous sentence.

"Individual Borrower" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“Individual Property” shall mean each parcel of real property, the Improvements thereon and all personal property owned by an Individual Borrower and encumbered by a Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the related Mortgage and referred to therein as the “Property”.

“Individual Property Release Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the Northtowne Adjusted Release Amount and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Loan with respect to a principal amount equal to the Northtowne Adjusted Release Amount, assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on the Loan with respect to a principal amount equal to the Northtowne Adjusted Release Amount is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event that such payment is not made on a Payment Date), over (ii) the principal amount equal to the Northtowne Adjusted Release Amount.

“Insolvency Opinion” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Richards, Layton & Finger, PA in connection with the Loan.

“Insurance Premiums” shall have the meaning set forth in Section 6.1(b) hereof.

“Insurance Proceeds” shall have the meaning set forth in Section 6.4(b) hereof.

“Intercreditor Agreement” shall mean that certain Agreement Between Noteholders dated on or about the date hereof among Note A-1 Lender, Note A-2 Lender and Note B Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Interest Rate” shall mean a rate of (a) with respect to the portion of the Loan then evidenced by Note A, the Note A Interest Rate, and (b) with respect to the portion of the Loan then evidenced by Note B, the Note B Interest Rate.

“JC Penney” shall mean The J.C. Penney Company, Inc., a Delaware corporation, and any JC Penney Replacement Tenant.

“JC Penney Lease” shall mean the Lease dated August 30, 1985 entered into by and between JC Penney, as tenant, and Northtowne, as landlord, as the same may have been modified, amended and/or assigned from time to time.

“JC Penney Renewal Criteria” shall mean Agent shall have received (i) evidence reasonably satisfactory to Agent that JC Penney has renewed the JC Penney Lease in accordance with the terms and conditions set forth in the JC Penney Lease and (ii) an updated tenant estoppel certificate from JC Penney confirming, among other things, (A) such renewal and

reflecting the terms of any such renewal, (B) that the JC Penney Lease is in full force and effect, (C) that JC Penney is in physical occupancy of the space covered by the JC Penney Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Northtowne), and (D) that to JC Penney's knowledge, there is no default by Northtowne under the JC Penney Lease.

"JC Penney Replacement Lease" or **"JC Penney Replacement Leases"** shall mean a Lease or Leases entered into with one or more JC Penney Replacement Tenants approved by Agent in accordance with Section 5.1.20 of this Agreement.

"JC Penney Replacement Lease Criteria" shall mean satisfaction of the following conditions with respect to all of the space demised to JC Penney under the JC Penney Lease:

(i) Northtowne shall have entered into one or more JC Penney Replacement Leases;

(ii) Each JC Penney Replacement Tenant shall be in physical occupancy of the space covered by the applicable JC Penney Replacement Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Borrower); and

(iii) Borrower shall provide Agent with the following:

(A) a copy of each executed JC Penney Replacement Lease;

(B) a tenant estoppel certificate in form and substance reasonably satisfactory to Agent executed by each JC Penney Replacement Tenant which confirms, among other things, that (aa) each JC Penney Replacement Lease is in full force and effect, (bb) to such JC Penney Replacement Tenant's knowledge, there is no default under any JC Penney Replacement Lease, and (cc) each JC Penney Replacement Tenant is in physical occupancy of its space and paying full contractual rent;

(C) upon request of Agent, a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Agent executed by each JC Penney Replacement Tenant and Agent;

(D) reasonably satisfactory evidence that Northtowne has performed and paid for all tenant improvements required to be performed or paid by Northtowne pursuant to the terms of such JC Penney Replacement Tenant and that there are no unpaid leasing commissions associated with such JC Penney Replacement Tenant; and

(E) an updated rent roll.

"JC Penney Replacement Tenant" or **"JC Penney Replacement Tenants"** shall mean a new Tenant or Tenants at the Property approved by Agent (which approval shall not be unreasonably withheld, conditioned or delayed) and leasing all or part of the space presently occupied by JC Penney pursuant to the JC Penney Lease.

“JC Penney Trigger Event” shall mean the occurrence of any of the following: (i) Borrower shall fail to satisfy the JC Penney Renewal Criteria on or before the notice period required for renewal by the JC Penney Lease or (ii) JC Penney “goes dark”, vacates or abandons its premises at the Property.

“Lease” shall mean any lease, sublease or 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 Properties by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and (b) 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 and injunctions of Governmental Authorities affecting any Individual Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, 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 an Individual Borrower, at any time in force affecting an Individual Borrower, the Individual Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Individual Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“Lender” and **“Lenders”** shall have the meaning set forth in the introductory paragraph hereto, together with their respective successors and assigns.

“Lien” shall mean, with respect to each Individual Property, any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting any Individual Borrower, or any Individual 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.

“Loan” shall mean the loan made by Lenders to Borrower pursuant to this Agreement.

“Loan Documents” shall mean, collectively, this Agreement, the Note, each Mortgage, the Environmental Indemnity, the Assignment of Management Agreement, the Guaranty, the Lockbox Agreement, the Cash Management Agreement, and all other documents executed and/or delivered in connection with the Loan (other than the Intercreditor Agreement).

“Loan to Value Ratio” shall mean, as of the date of its calculation, the ratio of (i) the sum of the outstanding principal amount of the Loan as of the date of such calculation to (ii) the fair market value of the Properties, as determined, in Agent’s sole discretion, by any commercially reasonable method permitted to a REMIC Trust.

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

“Lockbox Agreement” shall mean the Deposit Account Control Agreement dated the date hereof among Chapel Square, Agent and Lockbox Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to funds deposited in the Lockbox Account.

“Lockbox Bank” shall mean the clearing bank which establishes, maintains and holds the Lockbox Account, which shall be an Eligible Institution.

“Management Agreement” shall mean, individually and collectively, each of those certain management agreements entered into by and between the applicable Individual Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the applicable Individual Property, or, if the context requires, a Qualified Manager who is managing an Individual Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Manager” shall mean J.J. Gumberg Co., a Delaware corporation, or, if the context requires, a Qualified Manager who is managing the Individual Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

“Material Action” shall mean to consolidate or merge Borrower with or into any Person, or sell all or substantially all of the assets of Borrower, or to institute proceedings to have Borrower be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Borrower or file a petition seeking, or consent to, reorganization or relief with respect to Borrower under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of Borrower or a substantial part of its property, or make any assignment for the benefit of creditors of Borrower, or admit in any legal proceeding (unless failure to make such admission would be a violation of law) Borrower’s inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate Borrower.

“Maturity Date” shall mean April 1, 2024, or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“Maximum Legal Rate” shall mean the maximum nonusurious 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 the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“Monthly Debt Service Payment Amount” shall mean, on each Payment date, the aggregate of (a) the Note A Monthly Debt Service Payment Amount, and (b) the Note B Monthly Debt Service Payment Amount.

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

“Morningstar” shall mean Morningstar Credit Ratings LLC.

“Mortgage” or **“Mortgages”** shall mean with respect to each Individual Property, that certain first priority Open-End Fee and Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, Open-End Mortgage, Assignment of Rents, Security Agreement and Fixture Filing and/or Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the date hereof, executed and delivered by the related Individual Borrower to Agent (for the benefit of Lenders), as security for the Loan and encumbering the related Individual Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Net Operating Income” shall mean the amount obtained by subtracting (i) Operating Expenses on a trailing twelve (12) month basis from (ii) Gross Income from Operations on a trailing three (3) month basis multiplied by four (4).

“Net Proceeds” shall have the meaning set forth in Section 6.4(b) hereof.

“Net Proceeds Deficiency” shall have the meaning set forth in Section 6.4(b)(vi) hereof.

“North Huntingdon Property” shall mean the Individual Property owned by CANH, located in Irwin, Pennsylvania and North Huntingdon, Pennsylvania and referred to as “North Huntingdon” on Schedule III attached hereto.

“Northtowne” shall mean Northtowne Associates, a Pennsylvania limited partnership.

“Northtowne Property” shall mean the Individual Property owned by Northtowne, located in Defiance, Ohio and referred to as “Northtowne Mall” on Schedule III attached hereto.

“Northtowne Adjusted Release Amount” shall mean the sum of (a) the Northtowne Note A Adjusted Release Amount and (b) the Northtowne Note B Adjusted Release Amount.

“Northtowne Note A Adjusted Release Amount” shall mean the sum of (a) the Note A Allocated Loan Amount for the Northtowne Property and (b) fifteen percent (15%) of the Note A Allocated Loan Amount for the Northtowne Property.

“Northtowne Note B Adjusted Release Amount” shall mean the sum of (a) the Note B Allocated Loan Amount for the Northtowne Property and (b) fifteen percent (15%) of the Note B Allocated Loan Amount for the Northtowne Property.

“Note A” shall mean, together, Note A-1 and Note A-2.

“Note A Allocated Loan Amount” shall mean for an Individual Property the amount specified as such on Schedule III hereto.

“Note A Interest Rate” shall mean a rate of 4.8885% per annum.

“Note A Lender” and **“Note A Lenders”** shall have the meaning set forth in the introductory paragraph hereto, together with their respective successors and assigns.

“Note A Monthly Debt Service Payment Amount” shall mean, on each Payment Date, a constant monthly payment of \$646,634.10.

“Note A-1” shall mean that certain Promissory Note A-1, dated the date hereof, in the principal amount of \$65,000,000.00, made by Borrower in favor of Note A-1 Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Note A-1 Lender” shall have the meaning set forth in the introductory paragraph, together with its successors and assigns.

“Note A-1 Yield Maintenance Default Premium” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of Note A-1 to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under Note A-1 assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on Note A-1 is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount of Note A-1 being prepaid.

“Note A-1 Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of Note A-1 to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under Note A-1 assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on Note A-1 is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount of Note A-1 being prepaid.

“Note A-2” shall mean that certain Promissory Note A-2, dated the date hereof, in the principal amount of \$57,000,000.00, made by Borrower in favor of Note A-2 Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Note A-2 Lender” shall have the meaning set forth in the introductory paragraph, together with its successors and assigns.

“Note A-2 Yield Maintenance Default Premium” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of Note A-2 to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under Note A-2 assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on Note A-2 is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount of Note A-2 being prepaid.

“Note A-2 Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of Note A-2 to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under Note A-2 assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on Note A-2 is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount of Note A-2 being prepaid.

“Note B” shall mean that certain Promissory Note B, dated the date hereof, in the principal amount of \$16,500,000.00, made by Borrower in favor of Note B Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Note B Allocated Loan Amount” shall mean for an Individual Property the amount specified as such on Schedule III hereto.

“Note B Interest Rate” shall mean a rate of 10.50% per annum.

“Note B Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“Note B Monthly Debt Service Payment Amount” shall mean, on each Payment Date, a constant monthly payment of \$150,931.98.

“Note B Yield Maintenance Default Premium” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of Note B to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under Note B assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on Note B is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present

values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount of Note B being prepaid.

“Note B Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of Note B to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under Note B assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on Note B is paid on the Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount of Note B being prepaid.

“Note” shall mean together, Note A and Note B.

“O&M Program” shall have the meaning set forth in Section 5.1.19 hereof.

“Officer’s Certificate” shall mean a certificate delivered to Agent by Borrower which is signed by an authorized officer of Borrower or the general partner, managing member or sole member of Borrower, as applicable.

“Operating Expenses” shall mean the total of all expenditures, without duplication, computed on a cash accounting basis (except as provided to the contrary herein) consistently applied, of whatever kind relating to the operation, maintenance and management of the Properties that are incurred on a regular monthly or other periodic basis, including without limitation, ground rent, bad debt, 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 Agent, and other similar costs, but excluding depreciation or amortization, income taxes, Debt Service, Capital Expenditures and contributions to the Reserve Funds.

“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 any Individual Property, now or hereafter levied or assessed or imposed against such Individual Property or any part thereof.

“Other Obligations” shall have the meaning as set forth in the Mortgage.

“Outstanding TI Deposit” shall have the meaning set forth in Section 7.7.1 hereof.

“Outstanding TI Reserve Account” shall have the meaning set forth in Section 7.7.1 hereof.

“Outstanding TI Reserve Fund” shall have the meaning set forth in Section 7.7.1 hereof.

“Payment Date” shall mean the first (1st) day of each calendar month during the term of the Loan.

“Permitted Conditional Transfer” shall mean any Transfer of all or part of the limited partner partnership interests in any Individual Borrower that are not owned by any Holding Company; provided that, (w) the proposed transferee is not an Embargoed Person and such Transfer does not result in a violation by Borrower of Section 4.1.35 or Section 5.1.23 hereof, (x) such Transfer will not result in a change in Control of Borrower, (y) if the proposed transferee (including its Affiliates) will obtain a direct or indirect interest of 20% or more in Borrower as a result of the proposed Transfer, the proposed transferee shall be a Qualified Transferee and (z) following such Transfer, Guarantor Controls each Individual Borrower and owns, directly or indirectly, at least a 51% legal and beneficial interest in each Individual Borrower.

“Permitted Encumbrances” shall mean, with respect to an Individual Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in each Title Insurance Policy relating to such Individual Property or any part thereof, (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 Agent has approved or may approve in writing in Agent’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the applicable Individual Property or Borrower’s ability to repay the Loan.

“Permitted Investments” shall mean any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by Servicer, 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 first Payment Date following the date of acquiring such investment and meeting one of the appropriate standards set forth below:

(i) 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 (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) 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 (D) such investments must not be subject to liquidation prior to their maturity;

(ii) Federal Housing Administration debentures;

(iii) 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 (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) 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 (D) such investments must not be subject to liquidation prior to their maturity;

(iv) 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 (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) 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 (D) such investments must not be subject to liquidation prior to their maturity;

(v) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers’ acceptances 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 (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an “r” highlighter affixed to their rating, (C) 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 (D) such investments must not be subject to liquidation prior to their maturity;

(vi) 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 (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an "r" highlighter affixed to their rating, (C) 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 (D) such investments must not be subject to liquidation prior to their maturity;

(vii) 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 (A) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (B) if rated by S&P, must not have an "r" highlighter affixed to their rating, (C) 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 (D) such investments must not be subject to liquidation prior to their maturity;

(viii) units of taxable money market funds, 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

(ix) any other security, obligation or investment which has been approved as a Permitted Investment in writing by (a) Agent and (b) 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 or (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 120% of the yield to maturity at par of such underlying investment.

“Permitted Par Prepayment Date” shall mean the Business Day after the Payment Date which is three (3) months prior to the Maturity Date.

“Permitted Prepayment Date” shall mean the Business Day after the second (2nd) anniversary of the first Payment Date.

“Permitted Transfer” shall mean any of the following: (a) 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 and (b) 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.

“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 with respect to each Individual Property.

“Policies” shall have the meaning specified in Section 6.1(b) hereof.

“Policy” shall have the meaning specified in Section 6.1(b) hereof.

“Prepayment Rate” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Agent may reasonably select.

“Prepayment Rate Determination Date” shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of Section 2.4.1 hereof.

“Principal” shall mean the Special Purpose Entity that is the general partner of an Individual Borrower, if such Individual Borrower is a limited partnership, or managing member of an Individual Borrower, if such Individual Borrower is a limited liability company.

“Property” or **“Properties”** shall mean, collectively, each and every Individual Property which is subject to the terms of this Agreement and any Mortgage.

“Provided Information” shall mean any and all financial and other information provided at any time prepared by, or on behalf of, Borrower, Principal, Guarantor and/or Manager.

“Qualified Manager” shall mean either (a) Manager; or (b) in the reasonable judgment of Agent, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the applicable Individual Property, provided, that, if required by Agent, Borrower shall have obtained (i) prior written confirmation from the applicable Rating Agencies that management of the such Individual Property by such entity will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof and (ii) if such entity is an Affiliate of Borrower, an Additional Insolvency Opinion.

“Qualified Transferee” shall mean a transferee for whom, prior to the Transfer, Agent shall have received: (x) evidence that proposed transferee (1) has never been indicted or convicted of, or plead guilty or no contest to a felony, (2) has never been indicted or convicted of, or plead guilty or no contest to any offense under The USA PATRIOT Act (including the anti-terrorism provisions thereof), (3) has never been the subject of a voluntary or involuntary (to the extent the same has not been discharged) bankruptcy proceeding and (4) has no material outstanding judgments against such proposed transferee, and (y) both a credit check and bankruptcy, litigation, judgment lien and other comparable searches for such proposed transferee and such searches shall be acceptable to Agent in its reasonable discretion.

“Rating Agencies” shall mean each of S&P, Moody’s, Fitch, and Morningstar or any other nationally recognized statistical rating agency which has been approved by Agent and designated by Agent to assign a rating to the Securities.

“Related Entities” shall have the meaning set forth in Section 5.2.10(e) hereof.

“Release” of any Hazardous Substance 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 Substances.

“Remaining Property” shall have the meaning set forth in Section 2.6.2 hereof.

“Remediation” includes but is not limited to any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances.

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

“Rents” shall mean, with respect to each Individual Property, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent

equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to any Individual Property, including, without limitation, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, operating expenses or other reimbursables payable to any Individual Borrower (or to the Manager for the account of such Individual Borrower) under any Lease, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Individual Property.

“Replacement Management Agreement” shall mean, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Agent in form and substance, provided, with respect to this subclause (ii), Agent, at its option, may require that Borrower shall have obtained prior written confirmation (or other reasonably acceptable evidence) from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Agent (or of such other form and substance reasonably acceptable to Agent), executed and delivered to Agent by the related Individual Borrower and such Qualified Manager at Borrower’s expense.

“Replacement Reserve Account” shall have the meaning set forth in Section 7.3.1 hereof.

“Replacement Reserve Fund” shall have the meaning set forth in Section 7.3.1 hereof.

“Replacement Reserve Monthly Deposit” shall have the meaning set forth in Section 7.3.1 hereof.

“Replacements” shall have the meaning set forth in Section 7.3.1 hereof.

“Required Repairs” shall have the meaning set forth in Section 7.1 hereof.

“Reserve Funds” shall mean, collectively, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, the Rollover Reserve Fund, the Excess Cash Flow Reserve Fund, the Free Rent Reserve Fund, the Outstanding TI Reserve Fund, the Ground Rent Reserve Fund and any other reserve or escrow fund established by the Loan Documents.

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

“Restricted Party” shall mean collectively, (a) Borrower, any Principal, any Guarantor, and any Affiliated Manager and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, any Principal, any Guarantor, any Affiliated Manager or any non-member manager.

“Rollover Reserve Account” shall have the meaning set forth in Section 7.4.1 hereof.

“Rollover Reserve Fund” shall have the meaning set forth in Section 7.4.1 hereof.

“Rollover Reserve Monthly Deposit” shall have the meaning set forth in Section 7.4.1 hereof.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

“Sale or Pledge” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“Sears” shall mean Sears, Roebuck and Co., a New York Corporation, and any Sears Replacement Tenant.

“Sears Lease” shall mean the Lease dated September 23, 1997 entered into by and between Sears, as tenant, and Northtowne, as landlord, as the same may have been modified, amended and/or assigned from time to time.

“Sears Renewal Criteria” shall mean Agent shall have received (i) evidence reasonably satisfactory to Agent that Sears has renewed the Sears Lease in accordance with the terms and conditions set forth in the Sears Lease and (ii) an updated tenant estoppel certificate from Sears confirming, among other things, (A) such renewal and reflecting the terms of any such renewal, (B) that the Sears Lease is in full force and effect, (C) that Sears is in physical occupancy of the space covered by the Sears Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Northtowne), and (D) that to Sears’ knowledge, there is no default by Northtowne under the Sears Lease.

“Sears Replacement Lease” or **“Sears Replacement Leases”** shall mean a Lease or Leases entered into with one or more Sears Replacement Tenants approved by Agent in accordance with Section 5.1.20 of this Agreement.

“Sears Replacement Lease Criteria” shall mean satisfaction of the following conditions with respect to all of the space demised to Sears under the Sears Lease:

- (i) Northtowne shall have entered into one or more Sears Replacement Leases;
- (ii) Each Sears Replacement Tenant shall be in physical occupancy of the space covered by the applicable Sears Replacement Lease, open for business and paying full

contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Borrower); and

(iii) Borrower shall provide Agent with the following:

(A) a copy of each executed Sears Replacement Lease;

(B) a tenant estoppel certificate in form and substance reasonably satisfactory to Agent executed by each Sears Replacement Tenant which confirms, among other things, that (aa) each Sears Replacement Lease is in full force and effect, (bb) to such Sears Replacement Tenant's knowledge, there is no default under any Sears Replacement Lease, and (cc) each Sears Replacement Tenant is in physical occupancy of its space and paying full contractual rent;

(C) upon request of Agent, a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Agent executed by each Sears Replacement Tenant and Agent;

(D) reasonably satisfactory evidence that Northtowne has performed and paid for all tenant improvements required to be performed or paid by Northtowne pursuant to the terms of such Sears Replacement Tenant and that there are no unpaid leasing commissions associated with such Sears Replacement Tenant; and

(E) an updated rent roll.

"Sears Replacement Tenant" or **"Sears Replacement Tenants"** shall mean a new Tenant or Tenants at the Property approved by Agent (which approval shall not be unreasonably withheld, conditioned or delayed) and leasing all or part of the space presently occupied by Sears pursuant to the Sears Lease.

"Sears Trigger Event" shall mean the occurrence of any of the following: (i) Borrower shall fail to satisfy the Sears Renewal Criteria on or before the notice period required for renewal by the Sears Lease or (ii) Sears "goes dark", vacates or abandons its premises at the Property.

"Securities" shall have the meaning set forth in Section 9.1 hereof.

"Securitization" shall have the meaning set forth in Section 9.1 hereof.

"Servicer" shall have the meaning set forth in Section 9.5 hereof.

"Severed Loan Documents" shall have the meaning set forth in Section 8.2(c) hereof.

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless it has received (i) either prior consent to do otherwise from Agent or (ii) a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof and (iii) in each

case, a new Insolvency Opinion or an update of the Insolvency Opinion shall be issued indicating that any non-compliance does not affect the opinion set forth therein:

(i) is and shall be organized solely for the purpose of (A) with respect to each Individual Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the related Individual Property, entering into and performing its obligations under the Loan Documents with Agent and Lenders, refinancing the related Individual Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (B) in the case of a Principal, acting as a general partner of the limited partnership that owns the related Individual Property or as managing member of the limited liability company that owns the related Individual Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, management or operation of each Individual Property, or (B) in the case of a Principal, acting as general partner of the limited partnership that owns the related Individual Property or acting as a managing member of the limited liability company that owns the related Individual Property, as applicable;

(iii) has not owned and shall not own any real property other than, in the case of any Individual Borrower, the Individual Property;

(iv) does not have, shall not have and at no time had any assets other than (A) with respect to each Individual Borrower, the related Individual Property and personal property necessary or incidental to its ownership and operation of the related Individual Property or (B) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that owns the related Individual Property and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented or permitted to and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability

company, (B) has two (2) Independent Directors, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5%;

(viii) if such entity is a corporation, has and shall have at least two (2) Independent Directors, and shall not cause or permit the board of directors of such entity to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two (2) Independent Directors shall have participated in such vote and shall have voted in favor of such action;

(ix) if such entity is a limited liability company (other than a limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of “**Special Purpose Entity**”), has and shall have at least one (1) member that is a Special Purpose Entity, that is a corporation, that has at least two (2) Independent Directors and that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company;

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least two (2) Independent Directors serving as managers of such company, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless two (2) Independent Directors then serving as managers of the company shall have participated and consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company’s limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Agent; or (4) without the affirmative vote of two (2) Independent Directors of itself or the consent of a Principal that is a member or general partner in it: (A) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee,

trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;

(xii) has at all times been and shall at all times intend to remain solvent and has paid and shall intend to pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall intend 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 (to the extent there exists sufficient cash flow from the Property to do so); provided, however, the foregoing shall not require any direct or indirect equity owner, including without limitation, Guarantor or any Affiliate of Guarantor, to make additional capital contributions to any person or entity;

(xiii) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is a disregarded entity for tax purposes and is not required to file tax returns under applicable law and, if it is a corporation, has filed and shall file its own tax returns, except to the extent that it is a disregarded entity for tax purposes and is not required to file tax returns under applicable law;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, and shall conduct the business of the Property except for business of the Property conducted by another Person under a business management services agreement that is on commercially-reasonable and arm's-length terms consistent with the provisions set forth in this definition;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its

assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the Affiliate;

(xx) has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets (to the extent there exists sufficient cash flow from the Property to do so), and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to any Individual Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by any Individual Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on any Individual Property;

(xxiii) shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the related Individual Property and the routine administration of the related Individual Borrower, in amounts not to exceed 2% of the original principal amount of the Loan which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Agreement;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except with respect to the other Borrowers and Principals as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing,

including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than the other Borrowers or Principals with respect to loans secured by each Individual Property and no such pledge remains outstanding except to Agent to secure the Loan;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person,

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except for the other Borrowers and Principals as provided by the Loan Documents and by the Guarantor as provided in the Guaranty;

(xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower;

(xxxviii) has complied with and shall comply with the separateness provisions contained in its organizational documents, and has complied and shall comply with all of the other material terms and provisions contained in its organizational documents.

(xxxix) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;

(xl) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;

(xlii) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;

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

(xliv) has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;

(xlv) has provided Agent with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and

(xlvi) has no material contingent or actual obligations not related to any Individual Property.

"State" shall mean, with respect to an Individual Property, the State or Commonwealth in which such Individual Property or any part thereof is located.

"Survey" shall mean a survey of the Individual Property prepared by a surveyor licensed in the State and satisfactory to Agent and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Agent.

"Tax and Insurance Escrow Fund" shall have the meaning set forth in Section 7.2 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 any Individual Property or part thereof.

"Tenant" means the lessee of all or a portion of an Individual Property under a Lease.

"Tenant Direction Letter" shall have the meaning set forth in the Cash Management Agreement.

"Tenant Trigger Event" shall mean the occurrence of any of the following: (i) an Elder-Beerman Trigger Event, (ii) a Giant Eagle (North Huntingdon) Trigger Event, (iii) a Giant Eagle (Waterworks) Trigger Event, (iv) a JC Penney Trigger Event, (v) a Sears Trigger Event, or (vi) a Wal-Mart Trigger Event.

"Tenant Trigger Event Cap" shall mean an amount of Excess Cash Flow equal to \$500,000.00 if (and only if) only one Tenant Trigger Event shall exist; provided, however, if more than one Tenant Trigger Event shall exist, the Tenant Trigger Event Cap shall not apply.

"Tenant Trigger Event Cure" shall mean if the Tenant Trigger Event is caused solely by (a) the occurrence of an Elder-Beerman Trigger Event, Borrower's satisfaction of the Elder-Beerman Replacement Lease Criteria, the Elder-Beerman Renewal Criteria or the Tenant Trigger Event Cap (if no other Tenant Trigger Event shall exist), (b) if the Tenant Trigger Event is caused solely by the occurrence of a Giant Eagle (North Huntingdon) Trigger Event, Borrower's satisfaction of the Giant Eagle (North Huntingdon) Replacement Lease Criteria or the Giant Eagle (North Huntingdon) Renewal Criteria, (c) if the Tenant Trigger Event is caused solely by the occurrence of a Giant Eagle (Waterworks) Trigger Event, Borrower's satisfaction of the Giant Eagle (Waterworks) Replacement Lease Criteria or the Giant Eagle (Waterworks) Renewal Criteria (d) if the Tenant Trigger Event is caused solely by the occurrence of a JC Penney Trigger Event, Borrower's satisfaction of the JC Penney Replacement Lease Criteria, the JC Penney Renewal Criteria or the Tenant Trigger Event Cap (if no other Tenant Trigger Event shall exist), (e) if the Tenant Trigger Event is caused solely by the occurrence of a Sears Trigger Event, Borrower's satisfaction of the Sears Replacement Lease Criteria, the Sears Renewal Criteria or the Tenant Trigger Event Cap (if no other Tenant Trigger Event shall exist) and (f) if the Tenant Trigger Event is caused solely by the occurrence of a Wal-Mart Trigger Event, Borrower's satisfaction of the Wal-Mart Replacement Lease Criteria or the Wal-Mart Renewal Criteria.

"Termination Deposit" shall have the meaning set forth in Section 7.4.1 hereof.

"Threshold Amount" shall have the meaning set forth in Section 5.1.21 hereof.

"Title Insurance Policy" shall mean, with respect to each Individual Property, the mortgagee title insurance policy issued with respect to such Individual Property and insuring the lien of the Mortgage encumbering such Individual Property.

"Transfer" shall have the meaning set forth in Section 5.2.10(b) hereof.

“Transferee” shall have the meaning set forth in Section 5.2.10(e)(iii) hereof.

“Transferee’s Principals” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders, as applicable, and (B) such other members, partners or shareholders, as applicable, which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

“UCC” or **“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the State in which an Individual Property is located.

“U.S. Obligations” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to -the Rating Agencies, other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“Wal-Mart” shall mean Wal-Mart Real Estate Business Trust, a Delaware business trust, and any Wal-Mart Replacement Tenant.

“Wal-Mart Lease” shall mean the Lease dated December 18, 2002 entered into by and between Wal-Mart, as tenant, and GWG, as landlord, as the same may have been modified, amended and/or assigned from time to time.

“Wal-Mart Renewal Criteria” shall mean Agent shall have received (i) evidence reasonably satisfactory to Agent that Wal-Mart has renewed the Wal-Mart Lease in accordance with the terms and conditions set forth in the Wal-Mart Lease and (ii) an updated tenant estoppel certificate from Wal-Mart confirming, among other things, (A) such renewal and reflecting the terms of any such renewal, (B) that the Wal-Mart Lease is in full force and effect, (C) that Wal-Mart is in physical occupancy of the space covered by the Wal-Mart Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of GWG), and (D) that to Wal-Mart’s knowledge, there is no default by GWG under the Wal-Mart Lease.

“Wal-Mart Replacement Lease” or **“Wal-Mart Replacement Leases”** shall mean a Lease or Leases entered into with one or more Wal-Mart Replacement Tenants approved by Agent in accordance with Section 5.1.20 of this Agreement.

“Wal-Mart Replacement Lease Criteria” shall mean satisfaction of the following conditions with respect to all of the space demised to Wal-Mart under the Wal-Mart Lease:

(i) GWG shall have entered into one or more Wal-Mart Replacement Leases;

(ii) Each Wal-Mart Replacement Tenant shall be in physical occupancy of the space covered by the applicable Wal-Mart Replacement Lease, open for business and paying full contractual rent (without offset, free rent credit, outstanding tenant improvement obligations or leasing commission obligations on the part of Borrower); and

(iii) Borrower shall provide Agent with the following:

(A) a copy of each executed Wal-Mart Replacement Lease;

(B) a tenant estoppel certificate in form and substance reasonably satisfactory to Agent executed by each Wal-Mart Replacement Tenant which confirms, among other things, that (aa) each Wal-Mart Replacement Lease is in full force and effect, (bb) to such Wal-Mart Replacement Tenant's knowledge, there is no default under any Wal-Mart Replacement Lease, and (cc) each Wal-Mart Replacement Tenant is in physical occupancy of its space and paying full contractual rent;

(C) upon request of Agent, a subordination, non-disturbance and attornment agreement in form and substance reasonably satisfactory to Agent executed by each Wal-Mart Replacement Tenant and Agent;

(D) reasonably satisfactory evidence that WGW has performed and paid for all tenant improvements required to be performed or paid by WGW pursuant to the terms of such Wal-Mart Replacement Tenant and that there are no unpaid leasing commissions associated with such Wal-Mart Replacement Tenant; and

(E) an updated rent roll.

“Wal-Mart Replacement Tenant” or **“Wal-Mart Replacement Tenants”** shall mean a new Tenant or Tenants at the Property approved by Agent (which approval shall not be unreasonably withheld, conditioned or delayed) and leasing all or part of the space presently occupied by Wal-Mart pursuant to the Wal-Mart Lease.

“Wal-Mart Trigger Event” shall mean the occurrence of any of the following: (i) Borrower shall fail to satisfy the Wal-Mart Renewal Criteria on or before the notice period required for renewal by the Wal-Mart Lease or (ii) Wal-Mart “goes dark”, vacates or abandons its premises at the Property.

“Waterworks II” shall mean Waterworks Phase II, a Pennsylvania limited partnership.

“Waterworks Mortgage” shall mean with respect to the Waterworks Property, that certain first priority Open-End Fee and Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated the date hereof, executed and delivered by the related Individual Borrower to Agent (for the benefit of Lenders), as security for the Loan and encumbering the Waterworks Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Waterworks Property” shall mean the Individual Property owned and/or leased by Chapel Square, Waterworks II and WGW, located in Pittsburgh, Pennsylvania and referred to as “Waterworks” on Schedule III attached hereto.

“WGW” shall mean WGW Associates, a Pennsylvania limited partnership.

“Yield Maintenance Default Premium” shall mean the sum of the (a) Note A-1 Yield Maintenance Default Premium, (b) Note A-2 Yield Maintenance Default Premium and (c) Note B Yield Maintenance Default Premium.

“Yield Maintenance Premium” shall mean the sum of the (a) Note A-1 Yield Maintenance Premium, (b) Note A-2 Yield Maintenance Premium and (c) Note B Yield Maintenance Premium.

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. Unless otherwise specified, all references to any promissory note, mortgage, instrument, agreement, certificate, or other document shall mean and refer to the same as it may be amended, restated, replaced, supplemented or otherwise modified from time to time.

ARTICLE II - GENERAL TERMS

Section 2.1 Loan Commitment; Disbursement to Borrower.

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lenders hereby agree to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Single Disbursement to Borrower. Borrower may request and 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. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.

2.1.3 The Note, Mortgage and Loan Documents. The Loan shall be evidenced by the Note and secured by the Mortgages and the other Loan Documents.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) repay and discharge any existing loans relating to the Properties, (b) pay all past-due basic carrying costs, if any, with respect to the Properties, (c) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Agent, (e) fund any working capital requirements of the Properties and (f) distribute the balance, if any, to Borrower.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the portion of the principal balance of the Loan evidenced by a particular Note outstanding from time to time shall accrue at the applicable

Interest Rate or as otherwise set forth in this Agreement from (and including) the Closing Date to but excluding the Maturity Date. Each Note A shall bear the same interest rate.

2.2.2 Interest Calculation. Interest on the portion of the outstanding principal balance of the Loan evidenced by a particular Note shall be calculated by multiplying (a) the actual number of days elapsed in the relevant Accrual Period by (b) a daily rate based on the applicable Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance of the Loan evidenced by such Note.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, 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.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Agent or Lenders 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 Agent and Lenders for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, 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 of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Agent (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan for the initial Accrual Period and (b) on May 1, 2014, and on each Payment Date thereafter up to and including the Maturity Date, the Monthly Debt Service Payment Amount, which payments shall be applied first to accrued and unpaid interest and the balance to principal.

2.3.2 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Accrual Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Agent on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgages and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Agent within five (5) Business Days following written demand an amount equal to the lesser of four percent (4%) of such unpaid sum and the Maximum Legal Rate in order to defray the expense incurred by Agent and Lenders in handling and processing such delinquent payment and to compensate Agent and Lenders for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgages and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Agent (for the benefit of Lenders) not later than 11:00 A.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 Agent's office or as otherwise directed by Agent, and any funds received by Agent after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments.

(a) Except as otherwise expressly provided in this Section 2.4, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date.

(b) On the Permitted Prepayment Date, and on any Business Day thereafter through the Maturity Date, Borrower may, at its option, prepay the Debt in full (but not in part, except as provided in Section 2.6.2 below), provided that (i) no Event of Default then exists, (ii) Borrower submits a notice to Agent setting forth the projected date of prepayment, which date shall be no less than thirty (30) days from the date of such notice, (iii) Borrower pays to Agent (for the benefit of Lenders) (A) the unpaid principal amount of the Note, (B) all interest accrued and unpaid on the principal balance of the Note to and including the date of prepayment, (C) all other sums due under the Note, this Agreement and the other Loan Documents, (D) if such prepayment occurs prior to the Permitted Par Prepayment Date, the Yield Maintenance Premium, and (E) if such prepayment is not paid on a regularly scheduled Payment Date, interest for the full Accrual Period during which the prepayment occurs.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Agent actually receives any Net Proceeds, if Agent is not obligated to make such Net Proceeds available to Borrower for the Restoration of such Individual Property or otherwise remit such Net Proceeds to Borrower pursuant to Section 6.4 hereof, Borrower authorizes Agent, at Agent's option, to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; provided, however, if an

Event of Default has occurred and is continuing, Agent may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium or other premium shall be due in connection with any prepayment made pursuant to this Section 2.4.2.

2.4.3 Prepayments During an Event of Default. If an Event of Default exists at the time payment of all or any part of the Debt is tendered by Borrower, such tender shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment Amount and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof, and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium which can be applied by Agent in such order and priority as Agent shall determine in its sole and absolute discretion.

Section 2.5 [Intentionally Omitted].

Section 2.6 Release of Property. Except as set forth in this Section 2.6, no repayment or prepayment 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 Liens of the Mortgages on the Properties.

2.6.1 Release of All Properties.

(a) If Borrower has the right to and has elected to prepay the Loan in accordance with this Agreement, upon satisfaction of the requirements of Section 2.4 and this Section 2.6, all of the Properties shall be released from the Liens of their respective Mortgages.

(b) In connection with the release of the Mortgages, Borrower shall submit to Agent, not less than thirty (30) days prior to the date of prepayment, a release of Lien (and related Loan Documents) for each Individual Property for execution by Agent. Each such release shall be in a form appropriate in each jurisdiction in which each Individual 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 documentation Agent reasonably requires to be delivered by Borrower in connection with such releases, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrower shall reimburse Agent, Lenders, and Servicer for any reasonable costs and expenses Agent, Lenders, and Servicer incur arising from such release (including reasonable attorneys' fees and expenses) and Borrower shall pay, in connection with such release, (i) all recording charges, filing fees, taxes or other expenses payable in connection therewith, and (ii) to any Servicer, the current fee being assessed by such Servicer to effect such release.

2.6.2 Release of Northtowne Property. On the Permitted Prepayment Date, and on any Business Day thereafter through the Maturity Date, Borrower may obtain the release of the Northtowne Property from the Lien of the Mortgage thereon (and related Loan Documents) and the release of the related Individual Borrower's obligations under the Loan Documents with respect to the Northtowne Property (other than those expressly stated to survive), upon the satisfaction of each of the following conditions:

(a) Borrower shall pay to Agent (for the benefit of Lenders) the Northtowne Adjusted Release Amount together with the Individual Property Release Yield Maintenance Premium and, if the Northtowne Adjusted Release Amount is not paid on a regularly scheduled Payment Date, Borrower shall pay interest on the entire principal balance of the Loan for the full Accrual Period during which payment of the Northtowne Adjusted Release Amount occurs;

(b) No Default or Event of Default shall have occurred and be continuing;

(c) After giving effect to such release, the loan to value ratio of the Individual Properties remaining subject to the Lien of each remaining Mortgage (the “**Remaining Property**”), as determined by Agent pursuant to a newly commissioned fully narrative appraisal obtained by Agent at the sole expense of Borrower, shall not exceed seventy five percent (75%);

(d) Borrower shall, if available in the State, provide an endorsement to each Title Insurance Policy then insuring the lien created by each remaining Mortgage (x) extending the effective date of each such Title Insurance Policy to the effective date of the release and (y) confirming no change in the priority of each unreleased Mortgage on the Remaining Property;

(e) Subsequent to such release, each remaining Individual Borrower shall continue to be a Special Purpose Entity pursuant to, and in accordance with, Section 4.1.30 hereof;

(f) Borrower shall deliver to Agent and the Rating Agencies an Additional Insolvency Opinion or an update of the Insolvency Opinion indicating that the release does not affect the opinion set forth therein;

(g) Borrower shall deliver an opinion of tax counsel stating that as a result of such release of the applicable Individual Property the Loan will continue to be a “qualified mortgage” under applicable REMIC regulations and any REMIC Trust that has acquired the Loan (i) will not fail to maintain its status as a REMIC Trust, (ii) will not be subject to tax on any “prohibited transactions” or “prohibited contributions” and (iii) will not constitute a “significant modification” under applicable REMIC regulations

(h) Borrower shall submit to Agent, not less than thirty (30) days prior to the date of prepayment, a release of Lien (and related Loan Documents) for the Northtowne Property for execution by Agent. Such release shall be in a form appropriate in the jurisdiction in which the Northtowne 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 documentation Agent 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 Legal Requirements, and (ii) will effect such release in accordance with the terms of this Agreement, and (iii) will not impair or otherwise adversely affect the Liens, security interests and other rights of Agent and Lenders under the Loan Documents not being released (or as to the parties to the Loan Documents and Properties subject to the Loan Documents not being released);

(i) After giving effect to the release of the applicable Individual Borrower and Individual Property, the Debt Service Coverage Ratio for the Remaining Property based on the

trailing twelve (12) month period immediately preceding the release of the applicable Individual Property shall be equal to or greater than the greater of (i) 1.15:1.00, and (ii) the Debt Service Coverage Ratio for all of the Properties (including the Northtowne Property) immediately preceding the release of the Northtowne Property based on the trailing twelve (12) month period immediately preceding the release of the Northtowne Property;

(j) Borrower shall reimburse Agent, Lenders, and Servicer for any reasonable costs and expenses Agent, Lenders, and Servicer incur arising from such release (including reasonable attorneys' fees and expenses) and Borrower shall have paid, in connection with such release, (i) all recording charges, filing fees, taxes or other expenses payable in connection therewith, (ii) all costs and expenses of the Rating Agencies incurred with respect to such release, and (iii) to any Servicer, the then current fee being assessed by such Servicer to effect such release, which fee shall be reasonable and customary;

(k) If required by Agent, the Rating Agencies selected by Agent shall have delivered written confirmation from such Rating Agencies to the effect that such release of the Northtowne Property will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such release for the Securities or any class thereof issued in connection with a Securitization which are then outstanding; and

(l) Notwithstanding the foregoing provisions of this Section 2.6.2, if the Loan is included in a REMIC Trust and the Loan to Value Ratio (as determined by Agent in its sole discretion using any commercially reasonable method permitted to a REMIC Trust and excluding the value of Personal Property and going concern value) exceeds 125% immediately after the release of the applicable Individual Property, no release will be permitted unless the principal balance of the Loan is paid down by the greater of (i) the Adjusted Release Price or (ii) the least of one of the following amounts: (A) only if the released Individual Property is sold, the net proceeds of an arm's length sale of the released Individual Property to an unrelated Person, (B) the fair market value of the released Individual Property at the time of the release, or (C) an amount such that the Loan to Value Ratio (as so determined by Agent) after the release of the applicable Individual Property is not greater than the Loan to Value Ratio of the Properties immediately prior to such release, unless the Agent receives an opinion of counsel that, if (ii) is not followed, the Securitization will not fail to maintain its status as a REMIC Trust as a result of the release of the Northtowne Property.

Borrower shall have no right to release the Waterworks Property or the North Huntingdon Property.

2.6.3 Reamortization. Payment of the Northtowne Note A Adjusted Release Amount shall be applied to the outstanding principal balance of Note A, and the Note A Monthly Debt Service Payment Amount shall be reduced pro-rata. Payment of the Northtowne Note B Adjusted Release Amount shall be applied to the outstanding principal balance of Note B, and the Note B Monthly Debt Service Payment Amount shall be reduced pro-rata.

Section 2.7 Lockbox Account/Cash Management.

2.7.1 Lockbox Account.

(a) During the term of the Loan, Borrower shall establish and maintain one or more accounts (collectively, the “**Lockbox Account**”) with Lockbox Bank in trust for the benefit of Agent, which Lockbox Account shall be under the sole dominion and control of Agent. The Lockbox Account shall be entitled “Gumberg Associates-Chapel Square, a Pennsylvania limited partnership, as Borrower, for the benefit of JPMorgan Chase Bank, National Association, as Agent, for the benefit of Lenders, pursuant to that certain Loan Agreement dated as of April , 2014 – Lockbox Account”. Borrower hereby grants to Agent (for the benefit of Lenders) a first-priority security interest in the Lockbox Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Agent a perfected first priority security interest in the Lockbox Account and Borrower hereby authorizes Agent to file UCC-1 Financing Statements and continuations thereof in connection therewith. Agent and Servicer shall have the sole right to make withdrawals from the Lockbox Account and all costs and expenses for establishing and maintaining the Lockbox Account shall be paid by Borrower. All monies now or hereafter deposited into the Lockbox Account shall be deemed additional security for the Debt. The Lockbox Agreement and Lockbox Account shall remain in effect until the Loan has been repaid in full.

(b) Borrower shall, or shall cause Manager to, on or prior to April 15, 2014, deliver Tenant Direction Letters to all Tenants under Leases to deliver all Rents payable thereunder directly to the Lockbox Account. Borrower shall, and shall cause Manager to, deposit all amounts received by Borrower or Manager constituting Rents into the Lockbox Account within one (1) Business Day after receipt thereof.

(c) The Lockbox Agreement shall provide for the transfer to the Cash Management Account in immediately available funds by federal wire transfer all amounts on deposit in the Lockbox Account once every Business Day throughout the term of the Loan.

(d) Upon the occurrence of an Event of Default or a Bankruptcy Trigger Event, Agent may, in addition to any and all other rights and remedies available to Agent, apply any sums then present in the Lockbox Account to the payment of the Debt in any order in its sole discretion.

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

(f) Borrower shall not further pledge, assign or grant any security interest in the Lockbox 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 Agent as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Agent and Lenders and hold Agent and Lenders harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys’ fees and expenses) arising from or in any way connected with the Lockbox Account and/or the Lockbox Agreement (unless arising from the gross negligence or willful misconduct of Agent or any Lender) or the performance of the obligations for which the Lockbox 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 Agent in trust and for the benefit of Agent, which Cash Management Account shall be under the sole dominion and control of Agent. The Cash Management Account shall be entitled "Gumberg Associates-Chapel Square, Waterworks Phase II, WGW Associates, Northtowne Associates and CANH Associates, collectively as Borrower, for the benefit of JPMorgan Chase Bank, National Association, as Agent, for the benefit of Lenders, pursuant to that certain Loan Agreement dated as of April 1, 2014 - Cash Management Account." Borrower hereby grants to Agent (for the benefit of Lenders) a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Agent a perfected first priority security interest in the Cash Management Account and Borrower hereby authorizes Agent to file UCC-1 Financing Statements and continuations thereof in connection therewith. Borrower will not in any way alter or modify the Cash Management Account and will notify Agent of the account number thereof. Agent and Servicer shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) 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 and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(c) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default or a Bankruptcy Trigger Event may be applied by Agent in such order and priority as Agent shall determine.

(d) Borrower hereby agrees that Agent may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Agent shall provide notice thereof to Borrower.

2.7.3 Payments Received under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, 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 this Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Agent or Lenders.

ARTICLE III - CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent to Closing. The obligation of Lenders to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Agent of all of the

conditions precedent to closing set forth in the application or term sheet for the Loan delivered by Borrower to Lenders and the commitment or commitment rider, if any, to the application or term sheet for the Loan issued by Lenders.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. Each Individual Borrower represents and warrants as of the date hereof that:

4.1.1 Organization. Each Individual Borrower 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. Borrower 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. Borrower possesses all material rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own the Properties and to transact the businesses in which Borrower is now engaged, and the sole business of each Individual Borrower is the ownership, management and operation of the related Individual Property. The ownership interests in Borrower are as set forth on the organizational chart attached hereto as Schedule IV.

4.1.2 Proceedings. Borrower has taken all necessary limited partnership action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly 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, 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).

4.1.3 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 of the property or assets 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 the Property or Borrower's 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 of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's knowledge, threatened against or affecting Borrower, Guarantor, Principal or any Individual Property, which actions, suits or proceedings, if determined against Borrower, Guarantor, Principal or any

Individual Property, might materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor, Principal or the condition or ownership of any Individual Property.

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or any Individual 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 indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or any Individual Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of any Individual Property as permitted pursuant to clause (xxiii) of the definition of "Special Purpose Entity" set forth in Section 1.1 hereof and (b) obligations under the Loan Documents.

4.1.6 Title. Each Individual Borrower has good, marketable and insurable fee simple title to the real property comprising part of each Individual Property (other than the leasehold estate described as the "Ground Lease Parcel" in the Waterworks Mortgage) and good, marketable and insurable title to the leasehold estate described as the "Ground Lease Parcel" in the Waterworks Mortgage and good title to the balance of each Individual Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of applicable Individual Property (as currently used) or Borrower's ability to repay the Loan. Each 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 applicable Individual Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents 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 any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Except as set forth on Schedule 4.1.6, there are no claims for payment for work, labor or materials affecting the Properties which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into this 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 its obligations under such 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 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). No petition in bankruptcy has been filed against Borrower or any constituent Person in the last seven (7) years, and neither Borrower nor any constituent Person in the last seven (7) years 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 Persons are 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 assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents 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 which has not been disclosed to Agent which adversely affects, nor as far as Borrower can reasonably foresee, might adversely affect, any Individual Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9 No Plan Assets. Borrower does not sponsor, is not obligated to contribute to, and is not itself an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, 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 any state or other statute, regulation or other restriction 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 Agent or either Lender of any of its rights under the Loan Documents.

4.1.10 Compliance. To the best of Borrower's knowledge, Borrower and each Individual Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. 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 any Individual Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against any Individual Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. On the Closing Date, the Improvements at each Individual Property were in material compliance with applicable law.

4.1.11 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Agent in connection with the Loan (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of Borrower and each Individual Property, as applicable, 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 on a cash basis consistently applied throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, 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 any Individual Property or the current operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

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

4.1.13 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 by the terms and conditions of this Agreement or the other Loan Documents.

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

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

4.1.16 Separate Lots. Each Individual 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 such Individual Property.

4.1.17 Assessments. There are no pending or, to Borrower's knowledge, proposed special or other assessments for public improvements or otherwise affecting any Individual

Property, nor are there any contemplated improvements to any Individual Property that may result in such special or other assessments.

4.1.18 Enforceability. The Loan Documents are enforceable by Agent and each Lender (or any subsequent holder thereof) in accordance with their respective terms, subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower 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 to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and neither Borrower nor Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding as of the Closing Date.

4.1.20 Insurance. Borrower has obtained and has delivered to Agent true copies of the Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor, to the best of Borrower's knowledge, any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

4.1.21 Use of Property. Each Individual Property is used exclusively for retail shopping center purposes, and other appurtenant and related uses.

4.1.22 Certificate of Occupancy; Licenses. To the best of Borrower's knowledge, all certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits, required for the legal use, occupancy and operation of each Individual Property have been obtained and are in full force and effect. The use being made of each Individual Property is in conformity with the certificates of occupancy issued for each Individual Property.

4.1.23 Flood Zone. Except as may have been previously disclosed to Agent on the Survey obtained by Agent in connection with the closing of the Loan, none of the Improvements on any Individual Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards, or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) is in full force and effect with respect to such Individual Property.

4.1.24 Physical Condition. Each Individual 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; to the best of Borrower's knowledge,

there exists no structural or other material defects or damages in any Individual Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in any Individual 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.

4.1.25 Boundaries. To the best of Borrower's knowledge, all of the Improvements which were included in determining the appraised value of each Individual Property lie wholly within the boundaries and building restriction lines of such Individual Property, and no improvements on adjoining properties encroach upon any Individual Property, and no easements or other encumbrances upon any Individual Property encroach upon any of the Improvements, so as to affect the value or marketability of the applicable Individual Property except those which are insured against by the applicable Title Insurance Policy.

4.1.26 Leases. The Properties are not subject to any leases other than the Leases described in the rent rolls attached hereto as Schedule V and made a part hereof, which rent rolls are true, complete and accurate in all respects as of the Closing Date. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Properties or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, except as set forth in the rent rolls delivered to Agent hereunder, there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date. All security deposits are held by Borrower in accordance with applicable law. Except as set forth in the tenant estoppel certificates delivered to Agent in connection with the Loan, all work to be performed by Borrower under each Lease has been performed as required and has been accepted by the applicable Tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any Tenant has already been received by such Tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein which is outstanding. Except as set forth in the Leases, no Tenant listed on Schedule V has assigned its Lease or sublet all or any portion of the premises demised thereby, no such Tenant holds its leased premises under assignment or sublease, nor does anyone except such Tenant and its employees occupy such leased premises. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. Except as set forth in the Leases, no Tenant under any Lease has any right or option for additional space in the Improvements. Except as set forth in the Leases, no Tenant is currently in discussions or negotiations (directly or indirectly) with Borrower with respect to any material modification of its Lease, including, without limitation, any reduction in the rent or the term thereof.

4.1.27 Survey. The Survey for each Individual Property delivered to Agent in connection with this Agreement does not fail to reflect any material matter affecting such Individual Property or the title thereto.

4.1.28 Inventory. Borrower is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgages) located on or at such Individual Property and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder. All of the Equipment, Fixtures and Personal Property are sufficient to operate the Properties in the manner required hereunder and in the manner in which they are currently operated.

4.1.29 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements relating to Borrower's acquisition and ownership of the Property have been paid. 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 Mortgages, have been paid or will be paid in connection with such recordation, filing or registration.

4.1.30 Special Purpose Entity/Separateness.

(a) Until the Debt has been paid in full, each Individual Borrower hereby represents, warrants and covenants that (i) each Individual Borrower is, shall be and shall continue to be a Special Purpose Entity and (ii) Principal is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Agent and Lenders under this Agreement or any other Loan Document.

(c) Any and all of the stated facts and assumptions made in any Insolvency Opinion, including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects, and Borrower and Principal will have complied and will comply with all of the stated facts and assumptions made with respect to it in any Insolvency Opinion. Each entity other than Borrower and Principal with respect to which an assumption is made or a fact stated in any Insolvency Opinion will have complied and will comply with all of the assumptions made and facts stated with respect to it in any such Insolvency Opinion. Borrower covenants that in connection with any Additional Insolvency Opinion delivered in connection with this Agreement it shall provide an updated certification regarding compliance with the facts and assumptions made therein.

(d) Borrower covenants and agrees that Borrower shall provide Agent with thirty (30) days' prior written notice prior to the removal of an Independent Director of any of Borrower and/or Principal.

4.1.31 Management Agreement. Each 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. Each Management Agreement was entered into on commercially reasonable terms.

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

4.1.33 No Change in Facts or Circumstances; Disclosure. All information submitted by and on behalf of Borrower to Agent and in all financial statements, rent rolls (including the Rent Rolls attached hereto as Schedule V), 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 true, 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 use, operation or value of any Individual Property or the business operations or the financial condition of Borrower. Borrower has disclosed to Agent all material facts known to Borrower and has not failed to disclose any material fact known to Borrower that could cause any Provided Information or representation or warranty made herein to be materially misleading.

4.1.34 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 2005, 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.

4.1.35 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.36 Principal Place of Business; State of Organization. Borrower’s principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Each Borrower’s place of organization and organizational identification number are as set forth on Schedule I.

4.1.37 Environmental Representations and Warranties. Except as otherwise disclosed by that certain Phase I environmental report (or Phase II environmental report, if required) delivered to Agent by Borrower in connection with the origination of the Loan (such report is referred to below as the “**Environmental Report**”), (a) there are no Hazardous Substances or underground storage tanks in, on, or under the Property, except those that are (i) in compliance with Environmental Laws and with permits issued pursuant thereto (to the extent

such permits are required under Environmental Law), (ii) de-minimis amounts necessary to operate the Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Property in violation of Environmental Law and which are otherwise permitted under and used in compliance with Environmental Law and (iii) fully disclosed to Agent in writing pursuant to the Environmental Report; (b) there are no past, present or threatened Releases of Hazardous Substances in, on, under or from the Property which have not been fully remediated in accordance with Environmental Law; (c) to the best of Borrower's knowledge, there is no threat of any Release of Hazardous Substances migrating to the Property; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully remediated in accordance with Environmental Law; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including but not limited to a Governmental Authority) relating to Hazardous Substances or Remediation thereof, of possible liability of any Person with respect to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully disclosed to Agent, in writing, any and all information relating to environmental conditions in, on, under or from the Property that is known to Borrower and has provided to Agent all information that is contained in Borrower's files and records, including, but not limited to, any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

4.1.38 Cash Management Account. Borrower hereby represents and warrants to Agent and Lenders that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code of the State of New York) in the Lockbox Account and Cash Management Account in favor of Agent, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower in accordance with applicable law. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Lockbox Account and Cash Management Account;

(b) The Lockbox Account and Cash Management Account constitutes "deposit accounts" and/or "securities accounts" within the meaning of the Uniform Commercial Code of the State of New York;

(c) Pursuant and subject to the terms hereof and the other applicable Loan Documents, the Lockbox Bank and Cash Management Agent have agreed to comply with all instructions originated by Agent, without further consent by Borrower, directing disposition of the Lockbox Account and 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;

(d) Each of the Lockbox Account and Cash Management Account are not in the name of any Person other than Chapel Square, as pledgor, or Agent, as pledgee. Borrower has not consented to the Lockbox Bank and Cash Management Agent complying with instructions with respect to the Lockbox Account and Cash Management Account from any Person other than Agent; and

(e) None of the Properties are subject to any cash management system (other than pursuant to the Loan Documents), and any and all existing tenant instruction letters issued in connection with any previous financing have been duly terminated prior to the date hereof or will be terminated by the Tenant Direction Letters.

4.1.39 Ground Lease. Borrower hereby represents and warrants to Agent and Lenders the following with respect to the Ground Lease:

(a) The Ground Lease (or a memorandum of such Ground Lease) has been duly recorded. The Ground Lease permits the interest of the Borrower to be encumbered by a mortgage, deed of trust, indemnity deed of trust or deed to secure debt (provided that the mortgage, deed of trust, indemnity deed of trust or deed to secure debt, as applicable, is at all times subject and subordinate to the Ground Lease) or the Ground Lessor has approved and consented to the encumbrance of the Property by the Mortgage. There have not been amendments or modifications to the terms of the Ground Lease since recordation of the Ground Lease (or a memorandum thereof), with the exception of written instruments which have been recorded.

(b) Except for the Permitted Encumbrances and other encumbrances of record, the Borrower's interest in the Ground Lease is not subject to any Liens or encumbrances superior to, or of equal priority with, the Mortgage other than the Ground Lessor's related fee interest.

(c) As of the date hereof, the Ground Lease is in full force and effect and no default has occurred under the Ground Lease that is continuing and, to the best of Borrower's knowledge, there is no existing condition which, but for the passage of time or the giving of notice, could result in a default under the terms of the Ground Lease.

(d) The Ground Lease requires the Ground Lessor thereunder to enter into a new lease upon termination (prior to expiration of the term thereof) of such Ground Lease for any reason, including rejection or disaffirmation of such Ground Lease in a bankruptcy proceeding.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Agent and Lenders under this Agreement or any of the other Loan Documents by Borrower. 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 Agent and Lenders notwithstanding any investigation heretofore or hereafter made by Agent, any Lender or on behalf of any of them except to the extent that information set forth in the tenant

estoppel certificates, financial statements, Survey, Title Insurance Policy, zoning reports, property condition reports, environmental site assessments and Leases, in each case delivered to Agent in connection with the Loan, determined that any such Borrower representations, warranties, covenants and agreements are or were untrue.

ARTICLE V - BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgages encumbering the Properties (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Agent and Lenders that:

5.1.1 Existence; Compliance with Legal Requirements. 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 Properties (and the Improvements thereon and the use thereof), including, without limitation, building and zoning codes and certificates of occupancy. There shall never be committed by Borrower, and Borrower shall never permit any other Person in occupancy of or involved with the operation or use of any Individual Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against any Individual 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 the remainder of its property used or useful in the conduct of its business and shall keep the Properties in good working order and repair (ordinary wear and tear excepted), 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 Loan Documents. Borrower shall keep the Properties 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. After prior written notice to Agent, Borrower, at Borrower's own 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 any Individual Property or any alleged violation of any Legal Requirement, provided that (i) no Default or 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 instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iii) no Individual Property or any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (v) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or any Individual Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be reasonably requested by Agent, to

insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Agent may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Agent, the validity, applicability or violation of such Legal Requirement is finally established or any Individual Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Properties or any part thereof prior to delinquency; 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 7.2 hereof. Borrower shall furnish to Agent receipts evidencing 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, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Agent pursuant to Section 7.2 hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against any Individual Property, and shall promptly pay for all utility services provided to the Properties. After prior written notice to Agent, Borrower, at Borrower's 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 Default or 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 statutes, laws and ordinances; (iii) no Individual Property or any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled 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 applicable Individual Property; and (vi) unless Borrower shall have paid such contested Taxes or Other Charges under protest, Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Agent, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Agent may pay over any such cash deposit or part thereof held by Agent to the claimant entitled thereto at any time when, in the reasonable judgment of Agent, the entitlement of such claimant is established or any Individual Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of any Mortgage being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt written notice to Agent of any litigation or governmental proceedings pending or threatened against Borrower and/or Guarantor which might materially adversely affect Borrower's or Guarantor's condition (financial or otherwise) or business or any Individual Property.

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

5.1.5 Notice of Default. Borrower shall promptly advise Agent of any material adverse change in Borrower's or Guarantor's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Agent with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Agent hereunder or any rights obtained by Agent under any of the other Loan Documents and, in connection therewith, permit Agent, at its election, to participate in any such proceedings.

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Agent in obtaining for Agent (for the benefit of Lenders) the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Individual Property, and Agent and Lenders shall be reimbursed for any reasonable expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Agent in case of Casualty or Condemnation affecting any Individual Property or any part thereof) out of such Insurance Proceeds.

5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Agent 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 Agent in connection therewith;

(b) execute and deliver to Agent such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Agent may reasonably require; and

(c) do and execute 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 Agent shall reasonably require from time to time.

5.1.10 Principal Place of Business, State of Organization. Borrower will not cause or permit any change to be made in its name, identity (including its trade name or names), place of organization or formation (as set forth in Section 4.1.36 hereof) or Borrower's corporate or

partnership or other structure unless Borrower shall have first notified Agent in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Agent for the purpose of perfecting or protecting the lien and security interests of Agent pursuant to this Agreement, and the other Loan Documents and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Agent, which consent may be given or denied in Agent's sole discretion. Upon Agent's request, Borrower shall, at Borrower's sole cost and expense, execute and deliver additional security agreements and other instruments which may be necessary to effectively evidence or perfect Agent's security interest in the Properties as a result of such change of principal place of business or place of organization. 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 or 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) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Agent in writing at least thirty (30) days prior to the date of such change). Borrower shall promptly notify Agent of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Agent of such organizational identification number.

5.1.11 Financial Reporting.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with the requirements for a Special Purpose Entity set forth herein and a cash basis accounting consistently applied and reasonably acceptable to Agent (or such other accounting basis acceptable to Agent in the event Borrower proposes to change such accounting basis), 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 Properties. Agent and Lenders shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Agent and Lenders shall desire. Upon the occurrence and during the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Agent and Lenders to examine Borrower's accounting records with respect to the Properties, as Agent and each Lender shall determine to be necessary or appropriate in the protection of Agent's and such Lender's interest.

(b) Borrower will furnish to Agent annually, (i) at any time when a Cash Sweep Period is not in effect, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual financial statements prepared by Borrower and (ii) at any time when a Cash Sweep Period is in effect, within ninety (90) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual financial statements prepared by an independent certified public accountant acceptable to Agent and, in each case, accompanied by an Officer's Certificate stating that such financial statements are true, correct, accurate and complete and fairly present the financial condition and results of operation of Borrower and the Properties, in accordance with a cash basis accounting

consistently applied and reasonably acceptable to Agent (or such other accounting basis acceptable to Agent in the event Borrower proposes to change such accounting basis) covering each Individual Property for such Fiscal Year and containing statements of profit and loss for Borrower and the Properties and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for each Individual Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual net operating income, net cash flow, gross income, and operating expenses.

(c) Borrower will furnish, or cause to be furnished, to Agent 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, accurate, 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) quarterly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar quarter, noting net operating income, gross income, and operating expenses (not including any contributions to the Replacement Reserve Fund), and other information necessary and sufficient to fairly represent the financial position and results of operation of the Properties during such calendar quarter, and containing a comparison of budgeted income and expenses and the actual income and expenses; and (iii) a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding three (3), six (6), and twelve (12) month periods as of the last day of such quarter. In addition, such certificate shall also be accompanied by an Officer's Certificate stating that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Agent an Annual Budget not later than thirty (30) days prior to the commencement of such period or Fiscal Year in a form reasonably satisfactory to Agent. The Annual Budget shall be subject to Agent's written approval (which approval shall not be unreasonably withheld so long as no Event of Default has occurred and is continuing) at the commencement of a Cash Sweep Period and at all times during the continuation of a Cash Sweep Period (each such Annual Budget, an "**Approved Annual Budget**"). In the event that Agent objects to an Annual Budget in effect at the commencement of a Cash Sweep Period, Agent shall advise Borrower of such objections within fifteen (15) days thereafter (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Agent for Agent's written approval. Agent 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 Agent approves the Annual Budget. During a Cash Sweep Period, until such time that Agent approves a proposed Annual Budget, the most recently 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.

(e) During a Cash Sweep Period, in the event that Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Agent a

reasonably detailed explanation of such proposed Extraordinary Expense for Agent's approval, which may be given or denied in Agent's sole discretion.

(f) Borrower shall furnish to Agent, 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 Properties and the financial affairs of Borrower (or any Individual Property) as may be reasonably requested by Agent.

(g) Borrower shall furnish to Agent, within ten (10) Business Days after Agent's written request (or as soon thereafter as may be reasonably possible), financial and sales information from any Tenant designated by Agent (to the extent such financial and sales information is required to be provided under the applicable Lease and same is received by Borrower after request therefor).

(h) Borrower will cause Guarantor to furnish to Agent annually, (i) at any time when a Cash Sweep Period is not in effect, within one hundred twenty (120) days following the end of each Fiscal Year of Guarantor and (ii) at any time when a Cash Sweep Period is in effect, within ninety (90) days following the end of each Fiscal Year of Guarantor, a statement of net worth and liquidity, in the form reasonably required by Agent and accompanied by a certification from Guarantor stating that such statement is true, correct, accurate and complete and fairly presents the financial condition of Guarantor.

(i) Any reports, statements or other information required to be delivered under this Agreement shall be delivered in electronic form and prepared using Microsoft Word for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Agent may disclose information regarding the Properties and Borrower that is provided to Agent pursuant to this Section 5.1.11 in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will qualify to do business and will remain in good standing under the laws of the jurisdiction of its formation as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties. Borrower shall at all times during the term of the Loan, continue to own all of Equipment, Fixtures and Personal Property which are necessary to operate the Properties in the manner required hereunder and in the manner in which they are currently operated.

5.1.13 Title to the Properties. Borrower will warrant and defend (a) the fee title and leasehold title, as applicable, to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Mortgages on the Properties, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Agent and Lenders for any actual losses, costs, damages or expenses (including reasonable attorneys' fees and expenses) incurred by Agent and Lenders if an interest in any Individual Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Mortgage encumbering any Individual Property is foreclosed in whole or in part or that the Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering any Individual Property prior to or subsequent to the Mortgage in which proceeding Agent or any Lender is made a party, or (c) 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, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and expenses, actually incurred by Agent, Lenders 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.

5.1.15 Estoppel Statement.

(a) After request by Agent, Borrower shall within ten (10) days furnish Agent with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, claimed by Borrower, and (vi) that the Note, this Agreement, the Mortgages 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 deliver to Agent upon request, tenant estoppel certificates from each commercial Tenant leasing space at the Property (provided that 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 and Borrower shall not be obligated to pay any estoppel fees except to the extent required under the applicable Lease) in form and substance reasonably satisfactory to Agent provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

5.1.16 Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 hereof.

5.1.17 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, or applicable to, 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, or applicable to, Borrower without the prior written consent of Agent.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower and Principal as of the date of the Securitization.

5.1.19 Environmental Covenants.

(a) Borrower covenants and agrees that: (i) all uses and operations on or of the Properties, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (ii) there shall be no Releases of Hazardous Substances in, on, under or from the Properties; (iii) there shall be no Hazardous Substances in, on, or under the Properties, except those that are (A) in compliance with all Environmental Laws and with permits issued pursuant thereto (to the extent such permits are required by Environmental Law), (B) de-minimis amounts necessary to operate each Individual Property for the purposes set forth in the Loan Agreement which will not result in an environmental condition in, on or under the Properties and which are otherwise permitted under and used in compliance with Environmental Law and (C) fully disclosed to Agent in writing; (iv) Borrower shall keep each Individual Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (the “**Environmental Liens**”); (v) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to subsection (b) below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with each Individual Property, pursuant to any reasonable written request of Agent made in the event that Agent has reason to believe that an environmental hazard exists on each Individual Property (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Agent the reports and other results thereof, and Agent and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (vii) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Agent made in the event that Agent has reason to believe that an environmental hazard exists on each Individual Property (A) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from each Individual Property; (B) comply with any Environmental Law; (C) comply with any directive from any Governmental Authority; and (D) take any other reasonable action necessary or appropriate for protection of human health or the environment; (viii) Borrower shall not do or allow any Tenant or other user of each Individual Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Properties), impairs or may impair the value of each Individual Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to each Individual Property; and (ix) Borrower shall immediately notify Agent in writing, following Borrower’s knowledge thereof, of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Properties; (B) any non-compliance with any Environmental Laws related in any way to the Properties; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to each Individual Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to the release or potential release of Hazardous Substances or Remediation thereof, likely to result in liability of any Person pursuant to any Environmental Law, other environmental conditions in

connection with each Individual Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Section.

(b) In the event that Agent has reason to believe that an environmental hazard exists on any Individual Property that may, in Agent's sole discretion, endanger any Tenants or other occupants of such Individual Property or their guests or the general public or may materially and adversely affect the value of such Individual Property, upon reasonable notice from Agent, Borrower shall, at Borrower's expense, promptly cause an engineer or consultant satisfactory to Agent to conduct an environmental assessment or audit (the scope of which shall be determined in Agent's sole and absolute discretion) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing requested by Agent and promptly deliver the results of any such assessment, audit, sampling or other testing; provided, however, if such results are not delivered to Agent within a reasonable period or if Agent has reason to believe that an environmental hazard exists on an Individual Property that, in Agent's sole judgment, endangers any Tenant or other occupant of such Individual Property or their guests or the general public or may materially and adversely affect the value of such Individual Property, upon reasonable notice to Borrower, Agent and any other Person designated by Agent, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon any Individual Property at all reasonable times to assess any and all aspects of the environmental condition of such Individual Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Agent's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and reasonably conducting other invasive testing. Borrower shall cooperate with and provide Agent and any such Person designated by Agent with access to such Individual Property.

(c) Borrower hereby represents and warrants that attached hereto as Exhibit A is a true and complete copy of the (i) Asbestos Operations and Maintenance Program, North Huntingdon Square, prepared by American Geosciences, Inc., dated October 1, 2010, (ii) Asbestos Operations and Maintenance Program, Waterworks Mall, prepared by American Geosciences, Inc., dated October 1, 2010 and (iii) Asbestos Operations and Maintenance Program, Northtowne Mall, prepared by American Geosciences, Inc., dated October 1, 2010 (collectively, the "**O&M Program**"), and Borrower has as of the date hereof complied in all respects with the O&M Program. Borrower hereby covenants and agrees that, during the term of the Loan, including any extension or renewal thereof, Borrower shall comply in all respects with the terms and conditions of the O&M Program.

5.1.20 Leasing Matters. Any Leases with respect to any Individual Property written after the date hereof, for more than 20,000 square feet shall be subject to the prior written approval of Agent, which approval shall not be unreasonably withheld, conditioned or delayed. Upon request, Borrower shall furnish Agent with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates. All proposed Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Agent's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Agent or any purchaser at a sale by foreclosure or power of sale. The

applicable Individual Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the applicable Individual Property involved except that no termination by such Individual Borrower or acceptance of surrender by a Tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect such Individual Property; provided, however, that no such termination or surrender of any Lease covering more than 20,000 square feet will be permitted without the prior written consent of Agent; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (vi) shall execute and deliver at the request of Agent all such further assurances, confirmations and assignments in connection with the Leases as Agent shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, (i) Borrower shall not enter into a lease of all or substantially all of the Properties without Agent's prior written consent, (ii) all new Leases and all amendments, modifications, extensions, and renewals of existing Leases with Tenants that are Affiliates of Borrower shall be subject to the prior written consent of Agent and (iii) Borrower shall not relocate any Tenants at the Properties to any other building owned by any Affiliate of Borrower without the prior written consent of Agent.

5.1.21 Alterations. Borrower shall not be required to obtain Lender's prior consent to any alterations (it being agreed that Replacements shall not constitute alterations within the meaning of this Section 5.1.21) to any Improvements that at any time do not exceed \$500,000.00 (the "**Threshold Amount**"), provided the alterations (i) do not have a material adverse effect on Borrower's financial condition, the value of the Property or the Property's Net Operating Income, (ii) are non-structural, and (iii) do not change the building footprint. Otherwise, Borrower shall obtain Agent's prior written consent to any alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that may have a material adverse effect on Borrower's financial condition, the value of the Property or the Property's Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations that will not have a material adverse effect on Borrower's financial condition, the value of the Property or the Property's Net Operating Income, provided that such alterations are made in connection with (a) tenant improvement work performed pursuant to the terms of any Lease executed on or before the date hereof, (b) tenant improvement work performed pursuant to the terms and provisions of a Lease and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (c) alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) shall at any time exceed the Threshold Amount, Borrower shall promptly deliver to Agent 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) U.S. Obligations, (C) other securities having a rating acceptable to Agent and that, at Agent's option, the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization or (D) a completion and performance bond or an irrevocable letter of credit (payable on sight draft only) issued by a financial institution having a rating by S&P of not less than "A-1+" if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Agent and that, at Agent's option, the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or class thereof in connection with any Securitization. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Threshold Amount and Agent may apply such security from time to time at the option of Agent to pay for such alterations.

5.1.22 Operation of Property.

(a) Borrower shall cause the Properties to be operated, in all material respects, in accordance with the applicable Management Agreement (or Replacement Management Agreement) as applicable. In the event that any Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Agent's consent to any termination or modification of any Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with Manager or another Qualified Manager, as applicable.

(b) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under each Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Agent of any material default under any Management Agreement of which it is aware; (iii) upon request by Agent, promptly deliver to Agent a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under any Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under each Management Agreement, in a commercially reasonable manner.

5.1.23 Embargoed Person. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, any Principal or Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, any Principal or Guarantor, as applicable, with the result that the investment in Borrower, any Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, any Principal or Guarantor, as applicable, have been derived from, or are the proceeds

of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, any Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause any Individual Property to be subject to forfeiture or seizure.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgages and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Agent and Lenders that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Property.

(a) Borrower shall not, without Agent's prior written consent (which consent shall not be unreasonably withheld): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower may, without Agent's consent, replace the Manager so long as the replacement manager is 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 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.

(b) Following the occurrence and during the continuance 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 written consent of Agent, which consent may be granted, conditioned or withheld in Agent's sole discretion.

5.2.2 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of any Individual Property or permit any such action to be taken, except for Permitted Encumbrances and Liens being contested in accordance with the Loan Documents.

5.2.3 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Properties, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction or (e) cause the Principal to (i) dissolve, wind up or liquidate or take any action, or omit to take an action, as a result of which the Principal would be dissolved, wound up or liquidated in whole or in part, or (ii) amend, modify, waive or terminate the organizational documents of any Principal, in each case, without obtaining the prior written consent of Agent or Agent's designee.

5.2.4 Change In Business. Borrower shall not enter into any line of business other than the ownership and operation of the applicable Individual Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or

participate in activities other than the continuance of its present business. Nothing contained in this Section 5.2.4 is intended to expand the rights of Borrower contained in Section 5.2.10(d) hereof.

5.2.5 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.

5.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of any Individual Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of any Individual 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 written consent of Agent.

5.2.7 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of any Individual Property (a) with any other real property constituting a tax lot separate from such Individual Property, and (b) which constitutes real property with any portion of such Individual 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 such real property portion of such Individual Property.

5.2.8 [Intentionally Omitted].

5.2.9 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 Agent or either 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 Agent such certifications or other evidence from time to time throughout the term of the Loan, as requested by Agent in its sole discretion, that (A) 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(32) of ERISA; (B) Borrower is not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

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

(ii) 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

(iii) 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).

5.2.10 Transfers.

(a) Borrower acknowledges that Agent and Lenders have examined and relied on the experience of Borrower and its stockholders, general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as any Individual Property in agreeing to make the Loan, and will continue to rely on Borrower’s ownership of any Individual Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Agent and Lenders have a valid interest in maintaining the value of any Individual Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Agent (for the benefit of Lenders) can recover the Debt by a sale of any Individual Property.

(b) Without the prior written consent of Agent, and except to the extent otherwise set forth in this Section 5.2.10, Borrower shall not, and shall not permit any Restricted Party to do any of the following (collectively, a “**Transfer**”): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 5.1.20, (B) Permitted Transfers and (C) Permitted Conditional Transfers.

(c) A 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; (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; (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 partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited 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 a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (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) the

removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.

(d) Notwithstanding the provisions of this Section 5.2.10, Agent's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the stock, the limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfer shall result in the change of Control in a Restricted Party, and as a condition to each such Transfer, Agent shall receive not less than thirty (30) days prior written notice of such proposed Transfer. If after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer, deliver to Agent an Additional Insolvency Opinion acceptable to Agent and the Rating Agencies. In addition, at all times, Guarantor must continue to Control each Individual Borrower and Manager and own, directly or indirectly, at least a 51% legal and beneficial interest in each Individual Borrower and Manager, subject to paragraph (g) below.

(e) No Transfer of the Property and assumption of the Loan shall occur during the period that is sixty (60) days prior to and sixty (60) days after a Securitization. Otherwise, Agent's consent to Transfers of the Properties and assumption of the Loan shall not be unreasonably withheld provided that Agent receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied:

(i) Borrower shall pay Agent (for the benefit of Lenders) a transfer fee equal to one percent (1%) of the outstanding principal balance of the Loan at the time of each such transfer;

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Agent's and each Lender's reasonable counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "**Transferee**") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Properties, which expertise shall be reasonably determined by Agent;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Agent;

(v) Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any

insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Agent in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Agent;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Agent;

(viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Agent;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 4.1.35, 5.1.23 and 5.2.9 of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Agent, which shall be reasonably satisfactory to Agent and (B) all certificates, agreements, covenants and legal opinions reasonably required by Agent;

(x) If required by Agent, Transferee shall be approved by the Rating Agencies selected by Agent, which approval, if required by Agent, shall take the form of a confirmation in writing (or other reasonably satisfactory evidence) from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Agent shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty and Environmental Indemnity executed by Guarantor or execute a replacement guaranty and environmental indemnity reasonably satisfactory to Agent;

(xii) Borrower shall deliver, 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 related Individual Property and naming the Transferee as owner of such Individual Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, such Individual Property shall not be subject to any additional exceptions or liens other than those contained in the Title Policy issued on the date hereof and the Permitted Encumbrances;

(xiii) Each Individual Property shall be managed by Qualified Manager pursuant to one or more Replacement Management Agreements; and

(xiv) Borrower or Transferee, at its sole cost and expense, shall deliver to Agent an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Agent.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Mortgages and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Agent agrees to provide written evidence thereof reasonably requested by Borrower.

(f) Agent 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 Borrower's Transfer without Agent's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Agent has consented to any previous Transfer.

(g) Upon the death or incompetency of Ira J. Gumberg ("**Gumberg**"), it shall not be an Event of Default hereunder if Gumberg is replaced with an Approved Replacement Guarantor and all of the following conditions have been satisfied: (i) no Event of Default hereunder or under any of the other Loan Documents shall have occurred and be continuing on the date of such replacement and (ii) within sixty (60) days after the occurrence of such death or incompetency, (1) Borrower delivers to Agent written notice of its intent to substitute the Guarantor with an Approved Replacement Guarantor; (2) such Approved Replacement Guarantor shall execute and deliver to Agent an original replacement guaranty acceptable to Lender and which will be acceptable to Lender if in form and substance identical to the Guaranty; (3) Agent shall have received an opinion of counsel to Borrower (which counsel shall be acceptable to Agent) confirming that (x) the replacement guaranty has been executed and delivered by the Approved Replacement Guarantor and Borrower (as applicable), (y) the Approved Replacement Guarantor and Borrower (as applicable) have taken all necessary partnership, limited liability company or corporate action to authorize the execution and delivery of the replacement guaranty and (z) the replacement guaranty is the valid, legal and binding obligation of the Approved Replacement Guarantor and Borrower (as applicable) and is enforceable in accordance with their terms; (4) Borrower delivers to Agent an Additional Insolvency Opinion acceptable to Agent and the Rating Agencies; and (5) Borrower shall pay any and all reasonable out-of-pocket costs and expenses incurred by Agent and Lenders in connection therewith, including Agent's and Lenders' counsel fees and disbursements.

ARTICLE VI - INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 6.1 Insurance.

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

(i) comprehensive all risk "special form" insurance including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to 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) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of \$10,000.00 for all such insurance coverage; provided however with respect to windstorm and earthquake coverage, providing for a deductible satisfactory to Agent in its sole discretion; and (D) if any of the Improvements or the use of applicable Individual Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, and coverage for demolition costs and coverage for increased costs of construction in amounts acceptable to Lender. In addition, Borrower shall obtain: (y) 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 (1) the maximum amount of such insurance available, with respect to such Improvements, 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 (2) such greater amount as Agent shall require, and (z) earthquake insurance in amounts and in form and substance satisfactory to Agent in the event an Individual Property is located in an area with a high degree of seismic activity; provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i);

(ii) business income or rental loss insurance (A) with loss payable to Agent; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Properties (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least twenty-four (24) months after the date of the Casualty; and (D) containing 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 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 or rental loss 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 revenues from the Property for the succeeding twelve (12) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Agent pursuant to this subsection shall be held by Agent 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 this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Individual property and liability coverage form do not otherwise apply, (A) commercial general liability and umbrella/excess liability insurance, covering claims related to the structural construction, repairs or alterations being made at the Property which are not covered by or under the terms or provisions of the below mentioned commercial general liability and umbrella/excess liability insurance policies 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 all risks insured against pursuant to subsection (i) above, (3) including permission to occupy such Individual Property and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Agent on terms consistent with the commercial property insurance policy required under subsection (i) above;

(v) 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 a combined limit of not less than \$2,000,000.00 in the aggregate and \$1,000,000.00 per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Agent 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 on an "if any" basis; (3) independent contractors; (4) contractual liability for all insured contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(vi) if applicable, commercial automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000.00;

(vii) if applicable, worker's compensation and employee's liability subject to the worker's compensation laws of the applicable state;

(viii) umbrella and excess liability insurance in an amount not less than \$40,000,000.00 per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for employer liability and automobile liability, if applicable, which umbrella liability coverage shall apply in excess of such supplemental coverage;

(ix) the insurance required under this Section 6.1(a)(i), (ii), (v) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including

amounts) consistent with those required under Section 6.1(a)(i), (ii), (v) and (viii) above at all times during the term of the Loan; and

(x) upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to, sinkhole or land subsidence insurance, and in such reasonable amounts as Agent from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Individual Property located in or around the region in which such Individual Property is located.

(b) All insurance provided for in Section 6.1(a) hereof, 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 Agent as to insurance companies, 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 rating of “A:X” or better in the current Best’s Insurance Reports and a claims paying ability rating of “A” or better by at least two (2) of the Rating Agencies including, (i) S&P, (ii) Fitch, and (iii) Moody’s. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Agent as loss payee. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Agent, certificates of insurance evidencing the Policies, to be followed by complete copies of the Policies upon issuance, accompanied by evidence satisfactory to Agent of payment of the premiums due thereunder (the “**Insurance Premiums**”), shall be delivered by Borrower to Agent. Borrower shall promptly forward to Lender a copy of each written notice received by Borrower of any modification, reduction or cancellation of any of the Policies or of any of the coverages afforded under any of the Policies. Notwithstanding the foregoing, Borrower shall be permitted to keep in force the existing premium finance agreement provided that Borrower submits to Lender evidence satisfactory to Lender of each and every installment payment due under said premium finance agreement as such payment becomes due and payable.

(c) Any blanket insurance Policy shall specifically allocate to each Individual Property the amount of coverage from time to time required hereunder or shall otherwise provide the same protection as would a separate Policy insuring only such Individual Property in compliance with the provisions of Section 6.1(a) hereof.

(d) All Policies provided for or contemplated by Section 6.1(a) hereof, shall name Borrower as a named insured and, with respect to liability policies, except for the Policies referenced in Section 6.1(a)(vi) and (vii) of this Agreement, shall name Agent (for the benefit of Lenders) its successors and/or assigns as the additional insured, as its interests may appear, and in the case of property policies, including but not limited to terrorism, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Agent (for the benefit of Lenders) providing that the loss thereunder shall be payable to Agent (for the benefit of Lenders).

(e) All property Policies 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, or foreclosure or similar action, shall in any way affect the validity or enforceability of the insurance insofar as Agent is concerned;

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

(iii) the issuers thereof shall give written notice to Agent if the issuers elect not to renew prior to its expiration; and

(iv) Agent shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Agent shall have the right, without notice to Borrower, to take such action as Agent deems necessary to protect its interest in the Properties, including, without limitation, the obtaining of such insurance coverage as Agent in its sole discretion deems appropriate after three (3) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Agent deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All premiums incurred by Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Agent within five (5) Business Days following written demand and, until paid, shall be secured by the Mortgages and shall bear interest at the Default Rate.

Section 6.2 Casualty. If any Individual Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt written notice of such damage to Agent and shall promptly commence and diligently prosecute the completion of the Restoration of such Individual Property pursuant to Section 6.4 hereof as nearly as possible to the condition such Individual Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Agent and otherwise in accordance with Section 6.4 hereof. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Agent may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Agent may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than \$750,000.00 and Borrower shall deliver to Agent all instruments required by Agent to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Agent notice of the actual or threatened commencement of any proceeding for the Condemnation of any Individual Property and shall deliver to Agent copies of any and all papers served in connection with such proceedings. Agent may participate in any such proceedings, and Borrower shall from time to time deliver to Agent all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Agent, 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 Agent, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Agent and Lenders 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 any portion of any Individual Property is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property pursuant to Section 6.4 hereof and otherwise comply with the provisions of Section 6.4 hereof. If the applicable Individual Property is sold, through foreclosure or otherwise, prior to the receipt by Agent of the Award, Agent 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 the foregoing provisions of this Section 6.3, and Section 6.4 hereof, if the Loan or any portion thereof is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Mortgage in connection with a Condemnation of an Individual Property (but taking into account any proposed Restoration on the remaining portion of such Individual Property), the Loan to Value Ratio is greater than 125% (such value to be determined, in Agent's sole discretion, by any commercially reasonable method permitted to a REMIC Trust and excluding the value of Personal Property and going concern value), the principal balance of the Loan must be paid down by the least of the following amounts: (i) the net Condemnation 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 (as so determined by Agent) does not increase after the release, unless the Agent 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 as a result of the related release of such portion of the Lien of the Mortgage. Any such prepayment under shall be considered a mandatory prepayment pursuant to and in accordance with Section 2.4.2 hereof.

Section 6.4 Restoration. The following provisions shall apply in connection with the Restoration of any Individual Property:

(a) If the Net Proceeds shall be less than \$750,000.00 and the costs of completing the Restoration shall be less than \$750,000.00, the Net Proceeds will be disbursed by Agent (on behalf of Lenders) to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) hereof are met and Borrower delivers to Agent a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than \$750,000.00 or the costs of completing the Restoration is equal to or greater than \$750,000.00 Agent (on behalf of Lenders) shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Agent pursuant to Section 6.1(a)(i), (iv), (ix)

and (x) as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same (“**Insurance Proceeds**”), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same (“**Condemnation Proceeds**”), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

(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 Individual Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Individual Property is taken, and such land is located along the perimeter or periphery of the Individual Property, and no portion of the Improvements is located on such land;

(C) Leases demising in the aggregate a percentage amount equal to or greater than the Rentable Space Percentage of the total rentable space in an Individual 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, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense. The term “**Rentable Space Percentage**” shall mean (1) in the event the Net Proceeds are Insurance Proceeds, a percentage amount equal to seventy-five percent (75%) and (2) in the event the Net Proceeds are Condemnation Proceeds, a percentage amount equal to seventy-five percent (75%);

(D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be, occurs; provided that such sixty (60) day period shall be extended an additional sixty (60) days if Borrower has not received all required permits for such Restoration and is diligently working to obtain such required permits) and shall diligently pursue the same to satisfactory completion;

(E) Agent shall be reasonably satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Individual Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(ii) hereof, if applicable, or (3) by other funds of Borrower;

(F) Agent shall be reasonably 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, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the applicable Individual Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(ii) hereof;

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

(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 material loss of access to the related Individual Property or the Improvements;

(J) the Debt Service Coverage Ratio for the Individual Property, after giving effect to the Restoration, shall be equal to or greater than 1.10 to 1.0;

(K) Borrower shall deliver, or cause to be delivered, to Agent 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 subject to Agent's approval; and

(L) the loan to value ratio for the Individual Properties as determined by Agent pursuant to a newly commissioned fully narrative appraisal obtained by Agent at the sole expense of Borrower, shall not exceed eighty percent (80%);

(M) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Agent are sufficient in Agent's discretion to cover the cost of the Restoration.

Notwithstanding the foregoing, provided no Event of Default exists and remains uncured, Lender shall release up to \$200,000 in Net Proceeds to Borrower for Immediate Repairs. Lender shall release such Net Proceeds for such Immediate Repairs upon Lender's receipt of (1) an Officer's Certificate from Borrower (A) certifying that the funds are needed for Immediate Repairs with an explanation therefor, (B) describing the work to be performed in reasonable detail, (C) providing invoices for the work done, or estimates for the work to be done, and (D) stating that each such Person performing the Immediate Repairs has been paid in full or will be paid in full upon such disbursement.

(ii) The Net Proceeds shall be held by Agent in an interest-bearing Eligible Account and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and Other Obligations under the Loan Documents. The Net Proceeds shall be disbursed by Agent to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Agent that (A) 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 that will be funded by the requested disbursement have been paid for in full or if such payment is a progress payment, that such payment represents full payment to such Person, less any applicable retention amount, for work completed through the date of the relevant invoice from such Person; provided, however that reasonable amounts necessary to pay the costs of architect fees, planning and permitting may be disbursed prior to the installation of materials based on invoices submitted by Borrower, and (B) 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 Individual Property which have not either been fully bonded to the satisfaction of Agent and discharged of record or in the alternative fully insured to the satisfaction of Agent by the title company issuing the Title Insurance Policy.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Agent and by an independent consulting engineer selected by Agent (the "**Casualty Consultant**"), such approval not to be unreasonably withheld, conditioned or delayed. Agent 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 and anticipated to have contracts in excess of \$750,000, as well as the contracts under which they have been engaged, shall be subject to prior review and approval by Agent and the Casualty Consultant. All costs and expenses incurred by Agent in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Agent 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 Casualty Consultant, minus the Casualty Retainage. The term "**Casualty 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 Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall be reduced to five percent (5%) of the costs incurred upon receipt by Agent of reasonably satisfactory evidence that fifty percent (50%) of the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), 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 Agent that the Restoration has been completed

in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the Individual Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Agent receives evidence reasonably satisfactory to Agent that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Agent 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 the Casualty Consultant certifies to Agent 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 Agent or by the title company issuing the Title Insurance Policy, and Agent (for the benefit of Lenders) 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 Agent, 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 contractor, subcontractor or materialman.

(v) Agent 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 Agent in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs 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 Agent before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Agent shall be held by Agent 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 6.4(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 Agent after the Casualty Consultant certifies to Agent that the Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Agent of evidence satisfactory to Agent that all costs incurred in connection with the Restoration have been paid in full, shall be deposited in the Cash Management Account to be disbursed in accordance with this Agreement, 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) 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 6.4(b)(vii) hereof may be

retained and applied by Agent toward the payment of the Debt in accordance with Section 2.4.2 hereof, whether or not then due and payable in such order, priority and proportions as Agent in its sole discretion shall deem proper, or, at the discretion of Agent, the same may be paid, either in whole or in part, to Borrower for such purposes as Agent shall approve, in its discretion.

(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 that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Agent (on behalf of Lenders) or other transferee in the event of such other transfer of title.

ARTICLE VII - RESERVE FUNDS

Section 7.1 Required Repairs. Borrower shall perform the repairs at the Properties, as more particularly set forth on Schedule II hereto (such repairs hereinafter referred to as “**Required Repairs**”). Borrower shall complete the Required Repairs on or before the required deadline for each repair as set forth on Schedule II.

Section 7.2 Tax and Insurance Escrow Fund. Borrower shall pay to Agent (a) on the Closing Date an initial deposit and (b) on each Payment Date thereafter (i) one-twelfth (1/12) of the Taxes and Other Charges that Agent estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Agent sufficient funds to pay all such Taxes and Other Charges at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth (1/12) of the Insurance Premiums that Agent estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Agent 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 Escrow Fund**”). Agent will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Mortgages. In making any payment relating to the Tax and Insurance Escrow Fund, Agent may do so according to any bill, statement or estimate procured from the appropriate public office (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 Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to Section 5.1.2 hereof, Agent 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 Escrow Fund. If at any time Agent reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Agent shall notify Borrower of such determination and Borrower shall increase its monthly payments to Agent by the amount that Agent estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Other Charges and/or thirty (30) days prior to expiration of the Policies, as the case may be. The Tax and Insurance Escrow Fund shall be held by Lender in an interest bearing account, which interest shall be included with amounts on deposit in the Tax and Insurance Escrow Fund and held for the benefit of Borrower.

Section 7.3 Replacements and Replacement Reserve.

7.3.1 Replacement Reserve Fund. Borrower shall pay to Agent on each Payment Date \$17,971.00 (the "**Replacement Reserve Monthly Deposit**") which amounts have been reasonably estimated by Agent in its sole discretion to be due for replacements and repairs required to be made to the Properties during the calendar year (collectively, the "**Replacements**"). Amounts so deposited shall hereinafter be referred to as Borrower's "**Replacement Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "**Replacement Reserve Account**". Agent may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time after consultation with Borrower and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days notice to Borrower if Agent determines, based on recommendations set forth in a report from an independent engineer, that an increase is necessary to maintain the proper maintenance and operation of the Properties. The Replacement Reserve Account shall be held by Lender in an interest bearing account, which interest shall be included with amounts on deposit in the Replacement Reserve Account and held for the benefit of Borrower.

7.3.2 Disbursements from Replacement Reserve Account.

(a) Agent shall make disbursements from the Replacement Reserve Account to pay Borrower only for the costs of the Replacements. Agent shall not be obligated to make disbursements from the Replacement Reserve Account to reimburse Borrower for the costs of routine maintenance to an Individual Property, replacements of inventory or for costs which are to be reimbursed from the Rollover Reserve Fund or Outstanding TI Reserve Fund.

(b) Agent shall, upon written request from Borrower and satisfaction of the requirements set forth in this Section 7.3.2, disburse to Borrower amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower therefor, upon completion of such Replacements (or, upon partial completion in the case of Replacements made pursuant to Section 7.3.2(e) hereof) as determined by Agent. In no event shall Agent be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Agent and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower shall certify that all Replacements have been made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the applicable Individual Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Agent has agreed to issue joint checks as described below in connection with a particular Replacement, each request shall include evidence satisfactory to Agent of payment of all such amounts. Except as

provided in Section 7.3.2(e) hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Agent evidence of completion of the subject Replacement satisfactory to Agent in its reasonable judgment.

(d) Borrower shall pay all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower, Agent will issue joint checks, payable to Borrower and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Agent may require a waiver of lien from each Person receiving payment prior to Agent's disbursement from the Replacement Reserve Account. In addition, as a condition to any disbursement, Agent may require Borrower to obtain lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than \$25,000.00 for completion of its work or delivery of its materials. Any lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the applicable Individual Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, supplier, subcontractor, mechanic or materialmen is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the cost of a Replacement exceeds \$25,000.00, (ii) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Agent has approved in writing in advance such periodic payments, a request for reimbursement from the Replacement Reserve Account 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 the work, (B) the materials for which the request is made are on site at the applicable Individual Property and are properly secured or have been installed in such Individual Property, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Agent's judgment, sufficient to complete such Replacement and other Replacements when required, and (E) if required by Agent, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than \$25,000.00.

7.3.3 Performance of Replacements.

(a) Borrower shall make Replacements when required in order to keep each Individual Property in condition and repair consistent with other comparable properties in the same market segment in the metropolitan area in which the respective Individual Property is

located, and to keep each Individual Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Agent reserves the right, at its option, to approve all contracts or work orders in excess of \$500,000.00 with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Agent's request, Borrower shall assign any contract or subcontract to Agent.

(c) In the event Agent determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, Agent shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, without providing any prior notice to Borrower and to exercise any and all other remedies available to Agent upon an Event of Default hereunder.

(d) In order to facilitate Agent's completion or making of such Replacements pursuant to Section 7.3.3(c) above, during the continuance of an Event of Default, Borrower grants Agent the right to enter onto any Individual Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect such Individual Property from damage. All sums so expended by Agent, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgages. For this purpose Borrower during the continuance of an Event of Default constitutes and appoints Agent its true and lawful attorney-in-fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. 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 funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (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 any Individual Property, or as may be necessary or desirable for the completion of such Replacements, 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 any Individual Property or the rehabilitation and repair of any Individual Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this Section 7.3.3 shall: (i) make Agent responsible for making or completing any Replacements; (ii) require Agent to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Agent to proceed with any Replacements; or (iv) obligate Agent to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit Agent and Agent's agents and representatives (including, without limitation, Agent's engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 7.3.3 to enter onto the Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at each Individual Property, and to complete any Replacements made pursuant to this Section 7.3.3. Borrower shall use commercially reasonable efforts to cause all contractors and subcontractors to cooperate with Agent or Agent's representatives or such other persons described above in connection with inspections described in this Section 7.3.3(f) or the completion of Replacements pursuant to this Section 7.3.3.

(g) Agent may require an inspection of the Individual Property at Borrower's expense prior to making a monthly disbursement from the Replacement Reserve Account in order to verify completion of the Replacements for which reimbursement is sought. Agent may require that such inspection be conducted by an appropriate independent qualified professional selected by Agent and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Agent prior to the disbursement of any amounts from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Agent or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Agent and those that are being contested in accordance with the terms of the Loan Documents).

(i) Before each disbursement from the Replacement Reserve Account, Agent may require Borrower to provide Agent with a search of title to the applicable Individual Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the applicable Individual Property since the date of recordation of the related Mortgage and that title to such Individual Property is free and clear of all Liens (other than the lien of the related Mortgage and any other Liens previously approved in writing by Agent, if any).

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

(k) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Agent. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Agent or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Agent.

7.3.4 Failure to Make Replacements.

(a) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this Section 7.3 and such failure is not cured within thirty (30) days after notice from Agent. Upon the occurrence of such an Event of Default, Agent may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including but not limited to completion of the Replacements as provided in Section 7.3.3, or for any other repair or replacement to any Individual Property or toward payment of the Debt in such order, proportion and priority as Agent may determine in its sole discretion. Agent's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Agent under this Agreement and the other Loan Documents.

(b) Nothing in this Agreement shall obligate Agent to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Debt or in any specific order or priority.

7.3.5 Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 Rollover Reserve.

7.4.1 Deposits to Rollover Reserve Fund. Borrower shall pay to Agent (a) on each Payment Date \$83,333.33 (the "**Rollover Reserve Monthly Deposit**"), (b) on the date of Borrower's receipt thereof, any termination fee or other consideration payable to Borrower in connection with any Tenant's election to exercise any early termination option contained in its respective Lease of space at the Property or in connection with any other termination, amendment or modification of any Lease, reduction of Rents, shortening of the term or surrender of space thereunder ("**Termination Deposit**") and (c) upon the Payment Date immediately following the occurrence of a Tenant Trigger Event and continuing on each Payment Date thereafter until the occurrence of a Tenant Trigger Event Cure in relation to any and all outstanding Trigger Events as of such date of determination, the amounts required by Section 3.6(j) of the Cash Management Agreement, which amounts shall be deposited with and held by Agent for tenant improvement and leasing commission obligations incurred following the date hereof. Amounts so deposited shall hereinafter be referred to as the "**Rollover Reserve Fund**" and the account to which such amounts are held shall hereinafter be referred to as the "**Rollover Reserve Account**". Notwithstanding the aforementioned and provided that no Tenant Trigger Event shall have occurred and be continuing, the aggregate amount of the Rollover Reserve Fund, excluding all amounts attributable to any Termination Deposits, shall not exceed \$5,000,000.00 in the aggregate (the "**Rollover Reserve Cap**") on any Payment Date (after giving effect to the payment of the Rollover Reserve Monthly Deposit) and accordingly, to the extent a Rollover Reserve Monthly Deposit would result in the aggregate amount of Rollover Reserve Funds in the Rollover Reserve Account to exceed the Rollover Reserve Cap, such Rollover Reserve Monthly Deposit shall be decreased by an amount equal to such excess. The Rollover Reserve Account shall be held by Lender in an interest bearing account, which interest shall be included with amounts on deposit in the Rollover Reserve Account and held for the benefit of Borrower.

7.4.2 Withdrawal of Rollover Reserve Funds. Provided no Default or an Event of Default hereunder exists, Agent shall make disbursements from the Rollover Reserve Fund for tenant improvement and leasing commission obligations incurred by Borrower. All such expenses shall be approved by Agent in its reasonable discretion. Agent shall make disbursements as requested by Borrower on a quarterly basis in increments of no less than \$5,000.00 upon delivery by Borrower of Agent's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Agent, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Agent may require an inspection of any Individual Property at Borrower's expense prior to making a quarterly disbursement in order to verify completion of improvements for which reimbursement is sought.

Section 7.5 Excess Cash Flow Reserve Fund.

7.5.1 Deposits to Excess Cash Flow Reserve Fund. During a Cash Sweep Period, Borrower shall deposit with Agent all Excess Cash Flow in the Cash Management Account, which shall be held by Agent as additional security for the Loan and amounts so held shall be hereinafter referred to as the "**Excess Cash Flow Reserve Fund**" and the account to which such amounts are held shall hereinafter be referred to as the "**Excess Cash Flow Reserve Account**".

7.5.2 Release of Excess Cash Flow Reserve Funds. Upon the occurrence of a Cash Sweep Event Cure, all Excess Cash Flow Reserve Funds shall be deposited into the Cash Management Account to be disbursed in accordance with the Cash Management Agreement. Any Excess Cash Flow Reserve Funds remaining after the Debt has been paid in full shall be paid to Borrower.

Section 7.6 Free Rent Reserve Fund.

7.6.1 Deposits to Free Rent Reserve Fund. Borrower shall pay to Agent on the Closing Date a deposit in the amount of \$745,748.53.00 ("**Free Rent Deposit**"), which amount shall be deposited with and held by Agent to cover free rent or rent abatement for the tenants set forth on Schedule VI attached hereto. Amounts so deposited shall hereinafter be referred to as the "**Free Rent Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Free Rent Reserve Account.**" The Free Rent Reserve Account shall be held by Lender in an interest bearing account, which interest shall be included with amounts on deposit in the Free Rent Reserve Account and held for the benefit of Borrower.

7.6.2 Disbursement of Free Rent Reserve Funds. Provided no Event of Default has occurred and is continuing, Agent shall disburse the amounts on deposit in the Free Rent Reserve Account, to the Lockbox Account on a monthly basis in accordance with Schedule VI attached hereto.

Section 7.7 Outstanding TI Reserve.

7.7.1 Deposits to Outstanding TI Reserve Fund. Borrower shall pay to Agent on the Closing Date a deposit in the amount of \$2,227,720.44 ("**Outstanding TI Deposit**"), which amount shall be deposited with and held by Agent to cover outstanding tenant improvement

obligations and/or leasing commissions for the tenants described on Schedule VII attached hereto. Amounts so deposited shall hereinafter be referred to as the “**Outstanding TI Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as the “**Outstanding TI Reserve Account.**” The Outstanding TI Reserve Account shall be held by Lender in an interest bearing account, which interest shall be included with amounts on deposit in the Outstanding TI Reserve Account and held for the benefit of Borrower.

7.7.2 Disbursement of Outstanding TI Reserve Funds. Provided no Event of Default hereunder exists, Agent shall make disbursements from the Outstanding TI Reserve Account for tenant improvement and leasing commission obligations incurred by Borrower in connection with the tenants listed on Schedule VII. All such expenses shall be approved by Agent in its sole discretion. Agent shall make disbursements as requested by Borrower on a monthly basis in increments of no less than \$5,000.00 upon delivery by Borrower of Agent’s standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Agent, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Agent may require an inspection of the applicable Individual Property at Borrower’s expense prior to making a monthly disbursement in order to verify completion of improvements for which reimbursement is sought.

Section 7.8 Ground Lease Reserve Fund.

7.8.1 Deposits to Ground Lease Reserve Fund. Borrower shall pay to Agent (a) on the Closing Date an initial deposit and (b) on each Payment Date thereafter an amount sufficient to pay the Ground Rent Monthly Payment that Agent estimates will be payable by Borrower as lessee under the Ground Lease in order to accumulate with Agent sufficient funds to pay all such Ground Rent at least thirty (30) days prior to the due date. Amounts so deposited shall hereinafter be referred to as the “**Ground Rent Reserve Fund**” and the account in which such amounts are held shall be hereinafter be referred to as the “**Ground Rent Reserve Account.**”

7.8.2 Release of Ground Lease Reserve Funds. Agent shall apply amounts in the Ground Lease Reserve Fund to the payment of the Ground Rent. In making any payment relating to the Ground Rent, Agent may do so according to any bill, statement or estimate procured from the Ground Lessor under the Ground Lease, without inquiry into the accuracy of such bill, statement or estimate. If at any time Agent reasonably determines that the Ground Lease Reserve Fund is not or will not be sufficient to pay the Ground Rent by the date set forth above, Agent shall notify Borrower of such determination and Borrower shall increase its monthly payments to Agent by the amount that Agent estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Ground Rent. Any Ground Lease Reserve Funds remaining after the Debt has been paid in full shall be paid to Borrower.

Section 7.9 Reserve Funds, Generally.

(a) Borrower grants to Agent a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt.

(b) Upon the occurrence of and during the continuance of an Event of Default, Agent may, in addition to any and all other rights and remedies available to Agent, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion.

(c) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Agent. The Reserve Funds shall be held in an Eligible Account in Permitted Investments as directed by Agent or Agent's Servicer. Unless expressly provided for in this Article VII, all interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Agent. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower.

(d) Borrower shall not, without obtaining the prior written consent of Agent, further pledge, assign or grant any security interest in any Reserve Fund 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 Agent (for the benefit of Lenders) as the secured party, to be filed with respect thereto.

(e) Agent, Lenders, and Servicer shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Agent, Lenders, and Servicer and hold Agent, Lenders, and Servicer harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and 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 Agent all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Agent may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

(f) The required monthly deposits into the Reserve Funds and the Monthly Debt Service Payment Amount, shall be added together and shall be paid as an aggregate sum by Borrower to Agent.

(g) Any amount remaining in the Reserve Funds after the Debt has been paid in full shall be returned to Borrower.

ARTICLE VIII - DEFAULTS

Section 8.1 Event of Default.

(a) Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

(i) if any portion of the Debt is not paid when due;

(ii) if any of the Taxes or Other Charges are not paid prior to delinquency; provided, however, so long as Borrower is in compliance with the terms of Section 7.2 hereof (including having on deposit in the Tax and Insurance Escrow Fund sums sufficient to pay such Taxes or Other Charges and allocated for the payment of such Taxes or Other Charges when the same become due and payable) and no other Event of Default has occurred and is continuing, Agent's failure to pay such Taxes or Other Charges when the same are due and payable shall not constitute an Event of Default;

(iii) if the Policies are not kept in full force and effect or if true copies of the Policies are not delivered to Agent within ten (10) days following Borrower's receipt of Agent's written request; provided, however, so long as Borrower is in compliance with the terms of Section 7.2 hereof (including having on deposit in the Tax and Insurance Escrow Fund sums sufficient to pay Insurance Premiums and allocated for the payment of such Insurance Premiums when the same become due and payable) and no other Event of Default has occurred and is continuing, a failure to keep the Policies in full force and effect shall not constitute an Event of Default if Agent's failure to pay Insurance Premiums when the same are due and payable is the sole reason the Policies are not in full force and effect;

(iv) if Borrower Transfers or otherwise encumbers any portion of any Individual Property without Agent's prior written consent in violation of the provisions of this Agreement or Article 6 of each Mortgage;

(v) if any 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 Agent shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower or Principal shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower or Principal or any other guarantor under any guarantee issued in connection with the Loan or if Borrower or Principal 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 Principal, or if any proceeding for the dissolution or liquidation of Borrower or Principal shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or Principal upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower 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;

(ix) if Guarantor or any guarantor or indemnitor under any guaranty or indemnity issued in connection with the Loan shall make an assignment for the benefit of

creditors or if a receiver, liquidator or trustee shall be appointed for Guarantor or any guarantor or indemnitor under any guarantee or indemnity issued in connection with the Loan or if Guarantor or such other guarantor or indemnitor 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 such other guarantor or indemnitor, or if any proceeding for the dissolution or liquidation of Guarantor or such other guarantor or indemnitor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Guarantor or such other guarantor or indemnitor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Agent's option to determine whether any of the foregoing shall be an Event of Default;

(x) if Borrower breaches any covenant contained in Section 4.1.30 hereof or any negative covenant contained in Section 5.2 hereof;

(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 any of the assumptions contained in the Insolvency Opinion delivered to Agent in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, are or shall become untrue in any material respect;

(xiii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xiv) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.1 hereof, or fails to cooperate with Agent in connection with a Securitization pursuant to the provisions of Section 9.1 hereof, for three (3) Business Days after notice to Borrower from Agent;

(xv) if Borrower shall fail to observe or perform any term, covenant, condition or agreement in the Ground Lease beyond the cure period contained therein, or if the Ground Lease shall be cancelled or terminated for any reason; or

(xvi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above, for ten (10) days after written notice to Borrower from Agent, 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 Agent 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 sixty (60) days; or

(xvii) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such documents, whether as to any Individual Borrower, Guarantor or any Individual Property, or if any other such event shall occur or condition shall exist, if the effect of such default, event or condition is to accelerate the maturity of any portion of the Debt or to permit Agent 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 clauses (vi), (vii) or (viii) above) and at any time thereafter, 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, Agent may take such action, without notice or demand, that Agent deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Agent may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and 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.

Section 8.2 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 Agent and Lenders 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 Agent 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 Agent (for the benefit of Lenders) 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 all or any part of any Individual Property. Any such actions taken by Agent shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Agent may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Agent and Lenders 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 is continuing (i) Agent 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 Agent shall remain in full force and effect until Agent has exhausted all of its remedies against the Properties and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full. In addition, Agent shall have the right (without limiting any other rights of Agent and Lenders hereunder or under any other Loan

Document), subject to the Intercreditor Agreement, to apply amounts received by Agent (for the benefit of Lenders) during the continuance of an Event of Default in respect of the Debt (including any Monthly Debt Service Payment or any portion thereof) to the payment of amounts then due under Note A and/or Note B in such amounts and priority as Agent and Lenders shall determine in their respective sole discretion.

(b) With respect to Borrower and the Properties, nothing contained herein or in any other Loan Document shall be construed as requiring Agent to resort to any Individual Property for the satisfaction of any of the Debt in any preference or priority to any other Individual Property, and Agent may seek satisfaction out of all of the Properties, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Agent shall have the right from time to time to partially foreclose the Mortgages in any manner and for any amounts secured by the Mortgages then due and payable as determined by Agent in its sole 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, Agent may foreclose one or more of Mortgages to recover such delinquent payments or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loan, Agent may foreclose one or more of the Mortgages to recover so much of the principal balance of the Loan as Agent may accelerate and such other sums secured by one or more of the Mortgages as Agent may elect. Notwithstanding one or more partial foreclosures, the Properties shall remain subject to the Mortgages to secure payment of sums secured by the Mortgages and not previously recovered.

(c) During the continuation of an Event of Default, Agent shall have the right from time to time to sever Note A and/or Note B and the other Loan Documents into one or more separate Note A notes and/or Note B notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Agent shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Agent from time to time, promptly after the request of Agent, a severance agreement and such other documents as Agent shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Agent. During the continuation of an Event of Default, Borrower hereby absolutely and irrevocably appoints Agent 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, Agent shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Agent of Agent'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 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) As used in this Section 8.2, a "foreclosure" shall include, without limitation, any sale by power of sale.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Agent and Lenders under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Agent and any Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Agent's and Lenders' rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Agent may determine in its 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.

ARTICLE IX - SPECIAL PROVISIONS

Section 9.1 Securitization.

9.1.1 Sale of Notes and Securitization.

(a) Borrower acknowledges and agrees that Agent may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a "**Securitization**").

(b) At the request of Agent, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Agent or which may be reasonably required by Agent or take other actions reasonably required by Agent, in each case in order to satisfy the market standards to which Agent customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization. Agent shall have the right to provide to prospective investors and the Rating Agencies any information in its possession, including, without limitation, financial statements relating to Borrower, Guarantors, if any, the Properties and any Tenant of the Properties. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other Disclosure Documents. Borrower agrees that each of Borrower, Principal, Guarantor and their respective officers and representatives, shall, at Agent's request, at its sole cost and expense, cooperate with Agent's efforts to arrange for a Securitization in accordance with the market standards to which Agent customarily adheres and/or which may be required by prospective investors and/or the Rating Agencies in connection with any such Securitization. Borrower, Principal and Guarantor agree to review, at Agent's request in connection with the Securitization, the Disclosure Documents in connection with a Securitization as such Disclosure Documents relate to Borrower, Principal, Guarantor, the Property and the Loan, including without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Mortgage," "Description of the Mortgage Loan and Mortgaged Property," "The Manager," "The Borrower,"

and “Certain Legal Aspects of the Mortgage Loan,” and shall confirm that the factual statements and representations contained in such sections and such other information in the Disclosure Documents (to the extent such information relates to, or is based on, or includes any information regarding the Property, Borrower, Guarantor, Manager and/or the Loan) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(c) Borrower agrees to make upon Agent’s written request, without limitation, all structural or other changes to the Loan (including delivery of one or more new component Note A and/or Note B notes to replace the original Note A and/or Note B note or modify the original Note A and/or Note B note to reflect multiple components of the Loan and such new Note A and/or Note B notes or modified Note A and/or Note B note may have different interest rates and amortization schedules), modifications to any documents evidencing or securing the Loan, creation of one or more mezzanine loans to newly formed Special Purpose Entities (including amending Borrower’s organizational structure to provide for one or more mezzanine borrowers), delivery of opinions of counsel acceptable to the Rating Agencies or potential investors and addressing such matters as the Rating Agencies or potential investors may require; provided, however, that in creating such new Note A and/or Note B notes or modified Note A and/or Note B notes or mezzanine notes Borrower shall not be required to modify (i) the weighted average interest rate payable under Note A or Note B in effect immediately prior to such new notes or modification, (ii) the stated maturity of Note A or Note B, (iii) the aggregate amortization of principal of Note A or Note B, (iv) any other material economic term of the Loan, (v) decrease the time periods during which Borrower is permitted to perform its obligations under the Loan Documents, or (vi) otherwise take an action that would materially increase Borrower’s obligations under the Loan or the costs of the Loan to Borrower. In connection with the foregoing, Borrower covenants and agrees to modify the Cash Management Agreement to reflect the newly created components and/or mezzanine loans.

(d) [Intentionally Omitted].

(e) If requested by Agent, Borrower shall provide Agent, promptly upon request, with any financial statements, or financial, statistical or operating information, as Agent shall determine to be required pursuant to Regulation AB under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or any amendment, modification or replacement thereto or other legal requirements in connection with any private placement memorandum, prospectus or other disclosure documents or any filing pursuant to the Exchange Act in connection with the Securitization or as shall otherwise be reasonably requested by Agent.

9.1.2 Securitization Costs. All reasonable third party costs and expenses incurred by Borrower and the Guarantor in connection with Borrower’s complying with requests made under Section 9.1.1 (including, without limitation, the fees and expenses of the Rating Agencies) shall be paid by Borrower; provided that, Borrower’s responsibility for such third party costs and expenses incurred after the Closing Date in connection with Borrower’s complying with requests made under Section 9.1.1 shall not exceed \$50,000 in the aggregate.

Section 9.2 [Intentionally Omitted].

Section 9.3 Exculpation. Subject to the qualifications below, Agent and Lenders shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgages or the other Loan Documents by any action or proceeding wherein a money judgment or any deficiency judgment or other judgment establishing personal liability shall be sought against Borrower or any principal, director, officer, employee, beneficiary, shareholder, partner, member, trustee, agent or Affiliate of Borrower (but specifically excluding Borrower and Guarantor) or any legal representatives, successors or assigns of any of the foregoing (collectively, the “**Exculpated Parties**”), except that Agent may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Agent to enforce and realize upon its or Lenders’ interest under the Note, this Agreement, the Mortgages and the other Loan Documents, or in the Properties, the Rents, or any other collateral given to Agent 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 Properties, in the Rents and in any other collateral given to Agent, and Agent and Lenders, by accepting, as applicable, the Note, this Agreement, the Mortgages and the other Loan Documents, agree that Agent and Lenders shall not sue for, seek or demand any deficiency judgment against Borrower or any Exculpated Party in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgages or the other Loan Documents. The provisions of this Section 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 Agent to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgages; (c) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Agent and Lenders thereunder; (d) impair the right of Agent (for the benefit of Lenders) to obtain the appointment of a receiver; (e) impair the enforcement of any assignment of leases contained in the Mortgages; (f) constitute a prohibition against Agent (for the benefit of Lenders) to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Agent and each Lender to exercise its respective remedies against the Properties; or (g) constitute a waiver of the right of Agent (for the benefit of Lenders) 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 Agent and any Lender (including attorneys’ fees and expenses reasonably incurred) arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by any Individual Borrower, any Principal or Guarantor in connection with the Loan;
- (ii) the gross negligence or willful misconduct of any Individual Borrower, any Principal or Guarantor in connection with the Loan;
- (iii) material physical waste of any Individual Property;
- (iv) the removal or disposal of any portion of the Properties by any Individual Borrower, any Principal, Guarantor, Manager or any Affiliate of any Individual

Borrower, any Principal, Guarantor or Manager during the continuance of an Event of Default;

(v) the misapplication or conversion by any Individual Borrower, any Principal or Guarantor of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to any Individual Property, (B) any Awards received in connection with a Condemnation of all or a portion of any Individual Property, (C) any Rents following an Event of Default, or (D) any Rents paid more than one month in advance;

(vi) failure to pay charges for labor or materials or other charges or judgments that can create Liens on any portion of the Property;

(vii) any security deposits, advance deposits or any other deposits collected with respect to any Individual Property which are not delivered to Agent upon a foreclosure of such Individual Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(viii) the breach of the representation by Borrower that on the Closing Date, all Improvements at the Properties were in material compliance with applicable laws;

(ix) any Individual Borrower fails to maintain its status as a Special Purpose Entity or comply with any representation, warranty or covenant contained in Section 4.1.30 hereof; or

(x) any Individual Borrower fails to permit on-site inspections of the Property, fails to provide financial information or fails to appoint a new property manager upon the request of Agent as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Mortgage.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Agent shall not be deemed to have waived any right which Agent may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgages or to require that all collateral shall continue to secure all of the Debt owing to Agent and Lenders in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Individual Borrower (i) in the event of: (a) any Individual Borrower or Principal filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against any Individual Borrower or Principal under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law in which such Individual Borrower, Principal or Guarantor colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against such Individual Borrower or Principal from any Person; (c) any Individual Borrower or Principal 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 Code or any other Federal or state bankruptcy or insolvency law; (d) any Individual Borrower or Principal consenting to or acquiescing in or joining in an

application for the appointment of a custodian, receiver, trustee, or examiner for such Individual Borrower or Principal or any portion of the Individual Property; (e) any Individual Borrower or Principal making an assignment for the benefit of creditors, or admitting, in any legal proceeding, its insolvency or inability to pay its debts as they become due; (ii) if the first full monthly payment of principal and interest on the Note is not paid when due; (iii) if any Individual Borrower fails to maintain its status as a Special Purpose Entity or comply with any representation, warranty or covenant set forth in Section 4.1.30 hereof and such failure is cited as a factor in connection with a substantive consolidation of the assets and liabilities of Borrower with those of any other Person; (iv) if any Individual Borrower fails to obtain Agent's prior written consent to any Indebtedness or voluntary Lien encumbering any Individual Property; (v) if Borrower fails to observe or perform any term, covenant, condition or agreement in the Ground Lease beyond any cure period contained therein, or if the Ground Lease is amended, modified, cancelled or terminated for any reason without Agent's prior written consent; or (vi) if any Individual Borrower fails to obtain Agent's prior written consent to any Transfer as required by this Agreement or the Mortgages.

Section 9.4 Matters Concerning Manager. If (a) an Event of Default hereunder has occurred and remains uncured, (b) Manager shall become subject to a Bankruptcy Action or (c) a default occurs under the Management Agreement and Manager fails to cure such default within any notice and cure periods set forth therein, Borrower shall, at the request of Agent, terminate the Management Agreement and replace the 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.

Section 9.5 Servicer. At the option of Agent, 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 as "**Servicer**") selected by Agent and Agent 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 or other agreement providing for the servicing of one or more mortgage loans (collectively, the "**Servicing Agreement**") between Agent and Servicer. Borrower shall be responsible for any reasonable set up fees or any other initial costs relating to or arising under the Servicing Agreement, but Borrower shall not be responsible for payment of the regular monthly master servicing fee or trustee fee due to Servicer under the Servicing Agreement or any fees or expenses required to be borne by, and not reimbursable to, Servicer. Notwithstanding the foregoing, Borrower shall promptly reimburse Agent within five (5) Business Days following written demand for the following costs and expenses payable by Agent and each Lender to Servicer as a result of the Loan becoming specially serviced: (i) any liquidation fees that are due and payable to Servicer under the Servicing Agreement in connection with the exercise of any or all remedies permitted under this Agreement, (ii) any workout fees and special servicing fees that are due and payable to Servicer under the Servicing Agreement, which fees may be due and payable under the Servicing Agreement on a periodic or continuing basis, and (iii) the costs of all property inspections and/or appraisals of the Properties (or any updates to any existing inspection or appraisal) that Servicer may be required to obtain (other than the cost of regular annual inspections required to be borne by Servicer under the Servicing Agreement).

Section 9.6 Ground Lease Provisions.

(a) Borrower will: (i) pay the rent reserved by the Ground Lease as the same becomes due and payable; (ii) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the Borrower under the Ground Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify Agent in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or (following Borrower's becoming aware) the Ground Lessor under the Ground Lease; (iv) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the Borrower under the Ground Lease of the exercise of any right to renew or extend the term of the Ground Lease, promptly give notice to the Ground Lessor of the exercise of such right of extension or renewal or, if such extensions or renewals are automatic, not take any action to prevent the automatic exercise of such extensions or renewals; (v) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Agent, promptly notify Agent in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; (vi) promptly notify the Agent in writing of the receipt by the Borrower of any notice (other than notices customarily sent on a regular periodic basis) from the Ground Lessor under the Ground Lease and of any notice noting or claiming any default by the Borrower in the performance or observance of any of the terms, covenants, or conditions on the part of the Borrower to be performed or observed under the Ground Lease; (vii) promptly notify the Agent in writing of the receipt by the Borrower of any notice from the Ground Lessor of any termination of the Ground Lease pursuant to the provisions of the Ground Lease; (viii) promptly cause a copy of each such notice received by the Borrower from the Ground Lessor under the Ground Lease to be delivered to the Agent; and (ix) promptly notify Agent in writing of any request made by either party to the Ground Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Ground Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Agent a copy of the determination of the arbitrators or appraisers in each such proceeding.

(b) Borrower will not surrender the Ground Lease or Borrower's leasehold estate and interest therein, nor terminate or cancel the Ground Lease; and will not, without the prior written consent of Agent modify, change, supplement, alter or amend the Ground Lease, either orally or in writing, and as further security for the repayment of the indebtedness hereby secured and for the performance of the covenants, agreements, obligations and conditions herein and in the Ground Lease contained, Borrower hereby assigns to Agent all of its rights, privileges and prerogatives as ground lessee under the Ground Lease to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, without the prior written consent thereto by Agent, shall be void and of no force and effect. Without limiting the generality of the foregoing, Borrower will not reject the Ground Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, or allow the Ground Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Ground Lease as terminated by the Ground Lessor's rejection of the Ground Lease pursuant to 11 U.S.C. Section 365(h)(1) or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and

conditions herein and in the Ground Lease contained, Borrower hereby assigns to Agent all of its rights, privileges and prerogatives of Borrower and Borrower's bankruptcy trustee to deal with the Ground Lease, which right may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or Ground Lessor under the Ground Lease, including, without limitation, the right to assume or reject, or to compel the assumption or rejection of the Ground Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, the right to seek and obtain extensions of time to assume or reject the Ground Lease, the right to elect whether to treat the Ground Lease as terminated by the Ground Lessor's rejection of the Ground Lease or to remain in possession of the Property and offset damages pursuant to 11 U.S.C. Section 365(b)(1) or any successor law; and any exercise of such rights, privileges or prerogatives by Borrower or Borrower's bankruptcy trustee without the prior written consent thereto by Agent shall be void and of no force and effect. No release or forbearance of any of Borrower's obligations as ground lessee under the Ground Lease, whether pursuant to the Ground Lease or otherwise, shall release Borrower from any of its obligations under the Loan Documents, including, but not limited to, Borrower's obligations with respect to the payment of rent as provided for in the Ground Lease and the observance and performance of all of the covenants, agreements, obligations and conditions contained in the Ground Lease to be observed and performed by the ground lessee thereunder. Borrower hereby expressly grants to Agent, and agrees that Agent shall have, the absolute and immediate right (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) to enter in and upon the Property or any part thereof, to such extent and as often as Agent, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Borrower. Agent may immediately pay and expend such sums of money (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) as Agent, in its sole discretion, deems necessary to prevent or cure any such default by Borrower, and Borrower hereby agrees to pay to Agent (for the benefit of Lenders), immediately and without demand, all such sums so paid and expended by Agent and any Lender, together with interest thereon from the date of each such payment at the Default Rate. All sums so paid and expended by Agent and any Lender, and the interest thereon, shall be added to and be secured by the lien of the Mortgage. Unless Agent shall otherwise expressly consent in writing, the fee title to the real property demised by the Ground Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Borrower or in a third party by purchase or otherwise.

(c) Borrower will, within ten (10) days after written demand from Agent, use its best efforts to obtain from the Ground Lessor under the Ground Lease and deliver to Agent a certificate stating that such ground lease is in full force and effect, is unmodified, that no notice of termination thereon has been served on Borrower, stating the date to which the net rent has been paid and stating whether or not there are any defaults thereunder and specifying the nature of such defaults, if any.

(d) Borrower will furnish to Agent, upon demand, proof of payment of all items which are required to be paid by Borrower pursuant to the Ground Lease.

ARTICLE X - MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by each Lender of the Loan and the execution and delivery to each 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 Agent and each Lender.

Section 10.2 Agent's Discretion. Whenever pursuant to this Agreement, Agent exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Agent, the decision of Agent 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 Agent and shall be final and conclusive.

Section 10.3 Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY EACH 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 AGENT, ANY LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT AGENT'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:

**Corporation Service Company
1180 Avenue of the Americas, Suite 210
New York, New York 10036**

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 AGENT 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 10.4 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 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Agent or any 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, Agent and each 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 10.6 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 or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), 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 Note A Lender: JPMorgan Chase Bank, National Association
383 Madison Avenue
New York, New York 10179
Attention: Joseph E. Geoghan
Facsimile No.: (212) 834-6029

with a copy to: JPMorgan Chase Bank, National Association
Four New York Plaza, 20th Floor
New York, New York 10004
Attention: Nancy Alto
Facsimile No.: (917) 546-2564

and

Frost Brown Todd LLC
400 West Market Street
Suite 3200
Louisville, Kentucky 40202
Attention: Barry A. Hines, Esq.
Facsimile No.: (502) 581-1087

If to Note B Lender: ColFin CorAm Penn Retail Funding, LLC
c/o Colony Financial, Inc.

2450 Broadway 6th Floor
Santa Monica, California 90404
Attention: Darren Tangen
Email: dtangen@colonyinc.com

With a copy to: CorAmerica Capital, LLC
1960 East Grand Avenue
Suite 240
El Segundo, California 90245
Attention: William Petak
Facsimile No.: (310) 606-8450

With a copy to: colonylegal@colonyinc.com

If to Borrower: c/o J.J. Gumberg Co.
1051 Brinton Road
Pittsburgh, Pennsylvania 15221
Attention: General Counsel
Facsimile No.: (412) 244-4018

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; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 Trial by Jury. BORROWER 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 IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 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 10.9 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 10.10 Preferences. Agent and each 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 Agent or such 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 bankruptcy law, 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 Agent or such Lender.

Section 10.11 Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Agent except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Agent 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 Agent 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 Agent to Borrower.

Section 10.12 Remedies of Borrower. In the event that a claim or adjudication is made that Agent 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, Agent or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Agent nor its agents shall be liable for any monetary damages, and 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 Agent has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 Expenses; Indemnity.

(a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Agent or any Lender upon receipt of written notice from Agent for all costs and expenses (including reasonable attorneys' fees and expenses) incurred by Agent and any Lender in connection with (i) 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 Agent as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Properties); (ii) 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, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Agent's and each 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; (iv) 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 Agent; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and fees and expenses of counsel for providing to Agent (for the benefit of Lenders) all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Agent (for the benefit of Lenders) pursuant to this Agreement and the other Loan Documents; (vii) 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 (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Properties (including, without limitation, any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) 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 Agent or Lenders. Any cost and expenses due and payable to Agent and any Lender may be paid from any amounts in the Lockbox Account or Cash Management Account, as applicable.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other 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 disbursements of counsel in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not an Indemnified Party shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) 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 any Indemnified Party hereunder (i) to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party, (ii) for consequential, special and/or punitive damages or (iii) to the extent that such Indemnified Liabilities first arise at any time after Agent, any Lender or any of their respective Affiliates or other person or entity takes title to the Property. 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 Indemnified Parties.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Agent (for the benefit of Lenders) for, any fees and expenses incurred by any Rating Agency in connection with any Rating Agency review of the Loan, the Loan Documents or any

transaction contemplated thereby or 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 Agent shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 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 10.15 Offsets, Counterclaims and Defenses. Any assignee of Agent's or any 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 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower, Agent and each 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 Agent or any Lender nor to grant Agent or any Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Agent, each Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Agent, each 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 each Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Agent and each 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 Agent or Lenders if, in their respective sole discretion, Agent and/or such Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Agent, either Lender, JPMorgan Chase Bank, National Association or any of their Affiliates shall be subject to the prior written approval of Agent, such Lender or JPMorgan Chase Bank, National Association in their sole discretion.

Section 10.18 Waiver of Marshaling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshaling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties, and agrees not to assert any right under any laws pertaining to the marshaling 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 Agent (on behalf of Lenders) 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 Agent to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 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 Agent, any Lender, or their respective agents.

Section 10.20 Conflict; Construction of Documents; Reliance. Subject to Section 10.28 below, 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 Agent or any parent, subsidiary or Affiliate of Agent or of any Lender. Agent and each 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 Agent or any 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 Agent's exercise (on behalf of Lenders) of any such rights or remedies. Borrower acknowledges that Agent and Lenders each engage 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 10.21 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, except for Holiday Fenoglio Fowler, L.P. ("HFF"). Borrower agrees to pay all costs, commissions, fees and expenses of HFF in connection with the transactions contemplated herein. Borrower hereby acknowledges that Agent and Lenders may pay a subservicing strip to HFF in connection with certain subservicing activities to be performed by HFF post-closing. Borrower hereby agrees to indemnify, defend and hold Agent and each Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Agent's and each 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, a Lender or Agent (on behalf of Lenders) in connection with the transactions

contemplated herein. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 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, between Borrower and Agent and each Lender each are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Joint and Several Liability. If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 Certain Additional Rights of Agent and Lenders (VCOC). Notwithstanding anything to the contrary contained in this Agreement, Agent (on behalf of Lenders) 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 Agent having the right to call special meetings at any reasonable times and upon reasonable advance 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 5.1.11 hereof, to receive 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 Agent (on behalf of Lenders) 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 any Individual Property).

The rights described above in this Section 10.24 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Agent.

Section 10.25 Contributions and Waivers.

(a) As a result of the transactions contemplated by the Loan Documents, each Individual Borrower will benefit, directly and indirectly, from each Individual Borrower's obligation to pay the Debt and in consideration therefor each Individual Borrower desires to enter into an allocation and contribution agreement among themselves as set forth in this Section 10.25 to allocate such benefits among themselves and to provide a fair and equitable agreement to make contributions among each Individual Borrower in the event any payment is made by an

Individual Borrower hereunder to Agent (for the benefit of Lenders) which is in excess of the amount attributable to that Individual Borrower or its portion of its Individual Property (such payment being referred to herein as a “**Contribution**,” and for purposes of this Section 10.25, includes any exercise of recourse by Agent (on behalf of Lenders) against any collateral of an Individual Borrower and application of proceeds of such collateral in satisfaction of such Individual Borrower’s obligations to Agent and each Lender under the Loan Documents).

(b) Each Individual Borrower shall be liable hereunder with respect to the Debt only for such total maximum amount (if any) that would not render its obligations hereunder or under any of the Loan Documents subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provisions of any State law.

(c) In order to provide for a fair and equitable contribution among each Individual Borrower in the event that any Contribution is made by an Individual Borrower (a “**Funding Borrower**”), such Funding Borrower shall be entitled to a reimbursement Contribution (“**Reimbursement Contribution**”) from all other Individual Borrowers for all payments, damages and expenses incurred by that Funding Borrower in discharging any of the Debt, in the manner and to the extent set forth in this Section 10.25.

(d) For purposes hereof, the “**Benefit Amount**” of an Individual Borrower as of any date of determination shall be the net value of the benefits to such Individual Borrower and its affiliates from extensions of credit made by Lenders to (a) such Individual Borrower and (b) to the other Individual Borrowers hereunder and the Loan Documents to the extent such other Individual Borrowers have guaranteed or mortgaged their interest in one or more of the Properties to secure the Debt of such Individual Borrower to Agent (on behalf of Lenders).

(e) Each Individual Borrower shall be liable to a Funding Borrower in an amount equal to the greater of (A) the (i) ratio of the Benefit Amount of such Individual Borrower to the total amount of Debt, multiplied by (ii) the amount of Debt paid by such Funding Borrower, or (B) ninety-five percent (95%) of the excess of the fair saleable value of the Individual Property of such Individual Borrower over the total liabilities of such Individual Borrower (including the maximum amount reasonably expected to become due in respect of contingent liabilities) determined as of the date on which the payment made by a Funding Borrower is deemed made for purposes hereof (giving effect to all payments made by other Funding Borrowers as of such date in a manner to maximize the amount of such Contributions).

(f) In the event that at any time there exists more than one Funding Borrower with respect to any Contribution (in any such case, the “**Applicable Contribution**”), then Reimbursement Contributions from other Borrowers pursuant hereto shall be allocated among such Funding Borrowers in proportion to the total amount of the Contribution made for or on account of the other Individual Borrowers by each such Funding Borrower pursuant to the Applicable Contribution. In the event that at any time any Individual Borrower pays an amount hereunder in excess of the amount calculated pursuant to this Section 10.25 above, that Individual Borrower shall be deemed to be a Funding Borrower to the extent of such excess and shall be entitled to a Reimbursement Contribution from the other Individual Borrowers in accordance with the provisions of this Section.

(g) Each Individual Borrower acknowledges that the right to Reimbursement Contribution hereunder shall constitute an asset in favor of such Individual Borrower to which such Reimbursement Contribution is owing.

(h) No Reimbursement Contribution payments payable by an Individual Borrower pursuant to the terms of this Section 10.25 shall be paid until all amounts then due and payable by all of the Individual Borrowers to Agent and Lenders, pursuant to the terms of the Loan Documents, are paid in full in cash. Nothing contained in this Section 10.25 shall limit or affect in any way the obligations of any Individual Borrower to Agent and each Lender under the Note or any other Loan Documents.

(i) Each Individual Borrower waives:

(A) any right to require Agent (on behalf of Lenders) to proceed against any other Individual Borrower or any other person or to proceed against or exhaust any security held by Agent (on behalf of Lenders) at any time or to pursue any other remedy in Agent's power before proceeding against such Individual Borrower;

(B) any defense based upon any legal disability or other defense of any other Individual Borrower, any guarantor of any other person or by reason of the cessation or limitation of the liability of any other Individual Borrower or any guarantor from any cause other than full payment of all sums payable under the Note and any of the other Loan Documents;

(C) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of any other Individual Borrower or any principal of any other Individual Borrower or any defect in the formation of any other Individual Borrower or any principal of any other Individual Borrower;

(D) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal;

(E) any defense based upon any failure by Agent to obtain collateral for the indebtedness or failure by Agent to perfect a lien on any collateral;

(F) presentment, demand, protest and notice of any kind except as set forth in the Loan Documents;

(G) any defense based upon any failure of Agent to give notice of sale or other disposition any collateral to any other Individual Borrower or to any other person or entity or any defect in any notice that may be given in connection with any sale or disposition of any collateral;

(H) any defense based upon any failure of Agent to comply with applicable laws in connection with the sale or other disposition of any collateral, including, without limitation, any failure of Agent (on behalf of Lenders) to conduct a commercially reasonable sale or other disposition of any collateral;

(I) any defense based upon any election by Agent (on behalf of Lenders), in any bankruptcy proceeding, of the application or non-application of Section 1111(6)(2) of the Bankruptcy Code or any successor statute;

(J) any defense based upon any use of cash collateral under Section 363 of the Bankruptcy Code;

(K) any defense based upon any agreement or stipulation entered into by Agent with respect to the provision of adequate protection in any bankruptcy proceeding;

(L) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code;

(M) any defense based upon the avoidance of any security interest in favor of Agent (on behalf of Lenders) for any reason;

(N) any defense based upon any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding, including any discharge of, or bar or stay against collecting, all or any of the obligations evidenced by the Note or owing under any of the Loan Documents; and

(O) any defense or benefit based upon an Individual Borrower's, or any other party's, resignation of the portion of any obligation secured by the applicable Mortgage to be satisfied by any payment from any other Individual Borrower or any such party.

(j) Each Individual Borrower waives:

(A) all rights and defenses arising out of an election of remedies by Agent (on behalf of Lenders) even though the election of remedies, such as nonjudicial foreclosure with respect to security for the Loan or any other amounts owing under the Loan Documents, has destroyed such Individual Borrower's rights of subrogation and reimbursement against any other Individual Borrower;

(B) all rights and defenses that such Individual Borrower may have because any of the Debt is secured by real property. This means, among other things: (i) Agent (on behalf of Lenders) may, subject to Section 9.3, collect from such Individual Borrower without first foreclosing on any real or personal property collateral pledged by any other Individual Borrower, (ii) if Agent forecloses on any real property collateral pledged by any other Individual

Borrower, (a) except as provided by applicable law, the amount of the Debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, (b) Agent (for the benefit of Lenders) may, subject to Section 9.3, collect from such Individual Borrower even if any other Individual Borrower, by foreclosing on the real property collateral, has destroyed any right such Individual Borrower may have to collect from any other Individual Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Individual Borrower may have because any of the Debt is secured by real property; and

(C) any claim or other right which Individual Borrower might now have or hereafter acquire against any other Individual Borrower or any other person that arises from the existence or performance of any obligations under the Note, the Mortgage or the other Loan Documents, including, without limitation, any of the following: (i) any right of subrogation, reimbursement, exoneration, contribution, or indemnification; or (ii) any right to participate in any claim or remedy of Agent against any other Individual Borrower or any collateral security therefor, whether or not such claim, remedy or right arises in equity or under contract, statute or common law.

Section 10.26 Agent's Right to Unwind Cross-Collateralization/Cross-Default.

Subject to the terms of the Intercreditor Agreement, Agent (on behalf of Lenders) shall have the right, in connection with a repurchase by Agent of any portion of the Loan in connection with a Securitization, to unilaterally require the release of any Individual Property or Individual Borrower from the cross-defaulting and the cross-collateralization provisions effected pursuant to the grant of the Mortgage from each Individual Borrower and secured by the lien of the applicable Mortgage. Borrower shall cooperate with Agent in executing all documents as may be required in connection with splitting the Loan into two or more loans which shall not be cross-collateralized or cross-defaulted with each other. Borrower shall promptly deliver or cause to be delivered to Agent or its designee any replacement or substitute loan agreements, promissory notes, security instruments and other loan documents, title, hazard and liability insurance policies, opinions of counsel (including a new Insolvency Opinion with respect to each Individual Borrower) and other documents and instruments as Agent may reasonably request in order to effectuate the foregoing. Borrower agrees to reimburse Agent within five (5) Business Days following written demand for all third party costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) in connection with the foregoing.

Section 10.27 Note A-1 Lender as Agent.

(a) Appointment of Agent. Pursuant to and in accordance with the terms of the Intercreditor Agreement, Note B Lender and Note A Lender have authorized and appointed Note A-1 Lender to act as agent hereunder and under certain of the other Loan Documents and to act on behalf of Note A Lender and Note B Lender hereunder and under such other Loan Documents. Without limiting the foregoing, any rights, powers and remedies of enforcement available to any Lender, and all consents, waivers, approvals and other actions exercised by any Lender, by the terms of the Loan Documents or otherwise, may be exercised by Agent and, in

doing so, shall be exercised on behalf of Note A Lender and Note B Lender. Borrower and all third parties (including, but not limited to, any court) shall be entitled to rely on any and all acts of and communications by Agent with respect to the exercise of such rights, remedies and actions and the granting of such consents, waivers and approvals as the acts of each of Note A Lender and Note B Lender, without the right or necessity of making any inquiry of either Note A Lender and Note B Lender as to the authority of Agent, and such acts of Agent shall bind each of Note A Lender and Note B Lender in respect of Borrower and all third parties. Furthermore, all notices, certificates, opinions, financial statements or any other documents required to be delivered by Borrower or Guarantor to any Lender pursuant to this Agreement and the other Loan Documents shall be delivered to Agent and Agent shall distribute copies of each such document to such Lender in accordance with the terms of the Intercreditor Agreement. Agent shall also be responsible for distributing funds received by Agent from Borrower or Guarantor in accordance with the terms of the Loan Documents to each Lender as and when provided in the Intercreditor Agreement and for making all calculations required hereunder and under the other Loan Documents. Pursuant to Section 9.5 hereof, Note A Lender shall have the right to appoint a servicer to act on its behalf, both as Note A Lender and as Agent pursuant to this Section 10.27.

(b) Agent as Note A-1 Lender. As Note A-1 Lender, Agent shall have the same rights and powers hereunder as any other Lender or holder of a Note and may exercise the same as though it was not performing the duties specified herein. The terms "Lenders," "holders of Notes," or any similar terms shall, unless the context clearly otherwise indicates, include the Note A-1 Lender. Agent and its Affiliates may accept deposits from, lend money to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower or any Affiliate of Borrower as if it or they were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection with this Agreement and otherwise without having to account for the same to Lenders.

(c) Holders of Notes. Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof shall have been filed with Agent. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Note, shall be conclusive and binding on any subsequent holder, transferee or assignee of such Note or of any Note or Notes issued in exchange therefor.

Section 10.28 Intercreditor Agreement. Lenders are parties to the Intercreditor Agreement memorializing their relative rights and obligations with respect to the Loan and the Properties. Borrower hereby acknowledges and agrees that (i) such Intercreditor Agreement is intended solely for the benefit of Lenders and (ii) Borrower is not an intended third-party beneficiary of any of the provisions therein and shall not be entitled to rely on any of the provisions contained therein. Lenders shall have no obligation to disclose to Borrower the contents of the Intercreditor Agreement. Borrower's obligations hereunder are independent of such Intercreditor Agreement and remain unmodified by the terms and provisions thereof. As between Lenders, in the event of any conflict between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

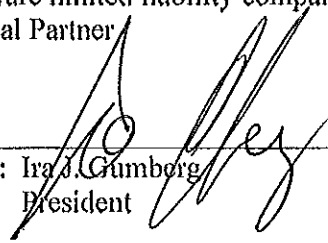
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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:

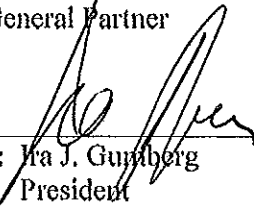
GUMBERG ASSOCIATES-CHAPEL SQUARE, a Pennsylvania limited partnership

By: Gumberg Chapel Square Holdings, LLC, a Delaware limited liability company, its sole General Partner

By: 
Name: Ira J. Gumberg
Title: President

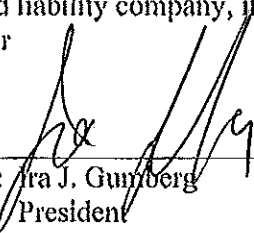
WATERWORKS PHASE II, a Pennsylvania limited partnership

By: Gumberg Waterworks Phase II Holdings, LLC, a Delaware limited liability company, its sole General Partner

By: 
Name: Ira J. Gumberg
Title: President

WGW ASSOCIATES, a Pennsylvania limited partnership

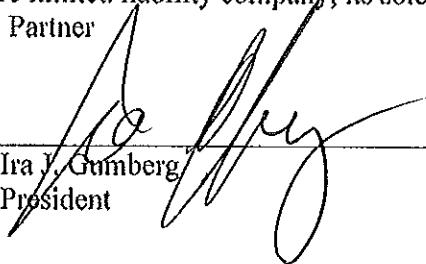
By: Gumberg WGW Holdings, LLC, a Delaware limited liability company, its sole General Partner

By: 
Name: Ira J. Gumberg
Title: President

NORTHTOWNE ASSOCIATES, a Pennsylvania limited partnership

By: Gumberg Northtowne Holdings, LLC, a Delaware limited liability company, its sole General Partner

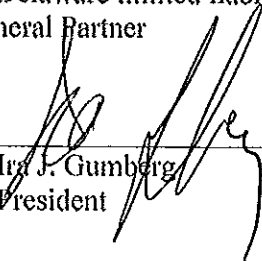
By: _____
Name: Ira J. Gumberg
Title: President



CANH ASSOCIATES, a Pennsylvania limited partnership

By: Gumberg North Huntingdon Square Holdings, LLC, a Delaware limited liability company, its sole General Partner

By: _____
Name: Ira J. Gumberg
Title: President



AGENT:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a banking association chartered under the laws of the United States of America

By: _____
Name: _____
Title: _____

NORTHTOWNE ASSOCIATES, a Pennsylvania limited partnership

By: Gumberg Northtowne Holdings, LLC, a Delaware limited liability company, its sole General Partner

By: _____
Name: Ira J. Gumberg
Title: President


CANH ASSOCIATES, a Pennsylvania limited partnership

By: Gumberg North Huntingdon Square Holdings, LLC, a Delaware limited liability company, its sole General Partner

By: _____
Name: Ira J. Gumberg
Title: President


NOTE A-1 LENDER:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a banking association chartered under the laws of the United States of America

By:  _____
Name: Steven Hantz
Title: Executive Director

NOTE A-2 LENDER:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a banking association chartered
under the laws of the United States of America

By: 
Name: Steven Hantz
Title: Executive Director

NOTE B LENDER:

COLFIN CORAM PENN RETAIL FUNDING,
LLC, a Delaware limited liability company

By: _____
Name: Mark H. Hedstrom
Title: Vice President

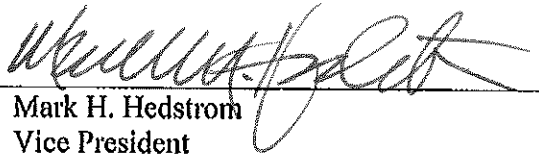
NOTE A LENDER:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a banking association chartered
under the laws of the United States of America

By: _____
Name: _____
Title: _____

NOTE B LENDER:

COLFIN CORAM PENN RETAIL FUNDING,
LLC, a Delaware limited liability company

By:  _____
Name: Mark H. Hedstrom
Title: Vice President

ACKNOWLEDGMENT

State of California
County of Los Angeles)

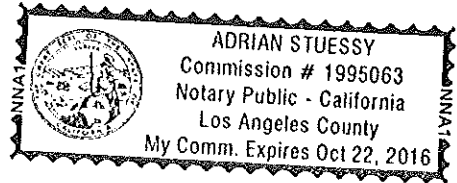
On March 31, 2014 before me, Adrian Stuessy, Notary Public
(insert name and title of the officer)

personally appeared Mark M. Hedstrom
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/het/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Adrian Stuessy (Seal)



SCHEDULE I

(Borrower)

| | <u>Individual Borrower</u> | <u>State/Commonwealth of Formation</u> | <u>Organizational Identification Number</u> |
|----|-----------------------------------|---|--|
| 1. | GUMBERG ASSOCIATES-CHAPEL SQUARE | Pennsylvania | 745261 |
| 2. | WATERWORKS PHASE II | Pennsylvania | 745260 |
| 3. | WGW ASSOCIATES | Pennsylvania | 3109483 |
| 4. | NORTHTOWNE ASSOCIATES | Pennsylvania | 3337687 |
| 5. | CANH ASSOCIATES | Pennsylvania | 2568767 |

SCHEDULE II

(Required Repairs - Deadlines For Completion)

| Item | Quantity | Repair Deadline for Completion |
|---|-----------------|---|
| Add parking spaces at the Waterworks Property | 13 | Ninety (90) days from the Closing Date. |

SCHEDULE III

(Allocated Loan Amounts)

| | <u>Individual Property</u> | <u>Allocated Loan Amount</u> | <u>Note A-1 Allocated Loan Amount</u> | <u>Note A-2 Allocated Loan Amount</u> | <u>Note B Allocated Loan Amount</u> |
|----|---------------------------------------|---|--|--|--|
| 1. | North Huntingdon | \$13,440,000.00 | \$6,310,000.00 | \$5,530,000.00 | \$1,600,000.00 |
| 2. | Northtowne Mall | \$16,000,000.00 | \$7,510,000.00 | \$6,580,000.00 | \$1,910,000.00 |
| 3. | Waterworks | \$109,060,000.00 | \$51,180,000.00 | \$44,890,000.00 | \$12,990,000.00 |
| | Total | \$138,500,000.00 | \$65,000,000.00 | \$57,000,000.00 | \$16,500,000.00 |

Sch. III-1

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

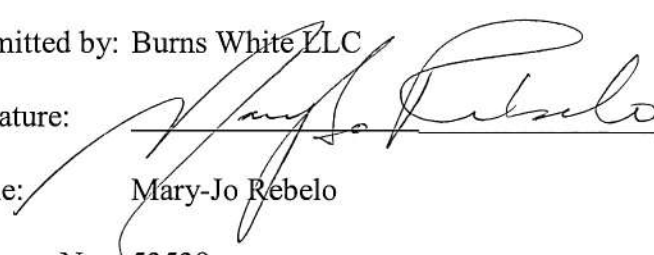
Dated: October 23, 2020

Submitted by: Burns White LLC

Signature: _____

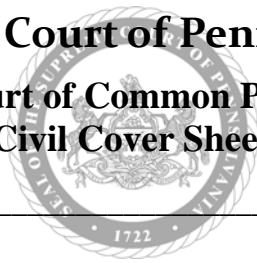
Name: Mary-Jo Rebelo

Attorney No. 53539

A handwritten signature in black ink, appearing to read "Mary-Jo Rebelo", is written over a horizontal line. The signature is fluid and cursive.

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet



_____ County

For Prothonotary Use Only:

Docket No: _____

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name: _____

Lead Defendant's Name: _____

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: _____

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute:
 Discrimination
 Employment Dispute: Other

 Other:

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other

 Zoning Board
 Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations
 Restraining Order
 Quo Warranto
 Replevin
 Other: _____

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.