

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., et al.,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**RESPONSIVE POSITION STATEMENT OF CLAIMANT
WILMINGTON TRUST (PROPERTY 3, 5001 S DREXEL BLVD)**

Claimant Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass Through Certificates Series 2014-LC16 (“Wilmington Trust”), pursuant to Docket Entries 941, 1551, and 1614, submits this Position Statement demonstrating that Wilmington Trust holds a first position, perfected security interest in the Group 5 property located at 5001 S. Drexel Boulevard (“5001 S. Drexel”).

RELEVANT FACTUAL BACKGROUND

Wilmington Trust is a claimant holding a first position, perfected security interest in 5001 S. Drexel, as the assignee of a mortgage recorded with the Cook County Recorder of Deeds on April 23, 2014. (Exhibit A.) That mortgage secured a loan in the amount of \$2,300,000 issued by lender Wells Fargo to borrower Ohio Commons LLC. *Id.* Neither Wells Fargo nor Ohio Commons are associated with Equitybuild, Inc. or any Equitybuild affiliates. On June 12, 2014, Wells Fargo assigned the mortgage, along with the Note and loan documents, to Wilmington Trust. That assignment was recorded on June 27, 2014. (Exhibit B.) Three and a half years later, Wilmington

Trust entered into an assumption agreement with the original borrower—Ohio Commons—and a new borrower—5001 S. Drexel LLC, an Equitybuild affiliated entity (“Equitybuild”)—under which 5001 S. Drexel LLC assumed the legal obligations of the original borrower pursuant to the terms of the original loan, including all legal obligations to lender Wilmington Trust as assignee to the loan agreement. (Exhibit C.) These legal obligations included payment of interest on the outstanding principal balance, including interest in the event of default, and costs and expenses. (Exhibit D, §§ 2.5, 16.) At the time of Equitybuild’s assumption of the original borrower’s obligations under the mortgage, and at all times prior to these receivership proceedings, Wilmington Trust had no knowledge, constructive, actual, or otherwise, that Equitybuild or its affiliates were engaged in any fraud or wrongdoing of any kind, including in relation to 5001 S. Drexel.

The individual investor claimants asserting an interest in 5001 S. Drexel obtained membership interests in SSDF2 Holdco 2, LLC (“SSDF2”), an Equitybuild affiliate, pursuant to agreements with SSDF2. (*See* Dkt. 1626, Exhibit 13.) According to those agreements, investors made capital contributions to become Class C members of SSDF2. (*Id.* at 5.) Accordingly, the individual investor claimants’ investments amounted to membership interests in an LLC.

On March 20, 2024, the Receiver filed his Submission to assist the Court in resolving the Group 5 claims asserted against four properties, including 5001 S. Drexel. (Dkt. 1626.) As to 5001 S. Drexel, the Receiver recommends that Wilmington Trust has priority over the other claimants because Wilmington Trust is the only lender with a secured claim against the property 5001 S. Drexel and the other claimants are unsecured claimants that only received membership interests in SSDF2. (*See id.* at 8-9.) For the reasons that follow, Wilmington Trust agrees with the Receiver’s priority recommendation but disagrees with the Receiver’s proposed distribution.

ARGUMENT

I. Wilmington Trust, as the Only Secured Claimant, is Entitled to Priority Over Other Claimants.

Wilmington Trust as the only claimant with a perfected, secured interest in 5001 S. Drexel is entitled to first priority over unsecured claimants as a matter of law. The priority of parties' respective security interests is a question of law. *Travelers Ins. Co. v. First Nat'l Bank*, 250 Ill. App. 3d 641, 644-45 (1st Dist. 1993). Generally, to ensure that a party has a first priority security interest, the party's interest must be first to attach and/or be perfected. *See USS-UPI, LLC v. Millenia Prods. Grp., Inc.*, 2023 IL App (3d) 220283-U, ¶ 14. With respect to mortgages, Illinois' Conveyances Act codifies the long-standing rule that a mortgage "becomes effective when it is recorded." *Firstmark Standard Life Ins. Co. v. Superior Bank FSB*, 271 Ill. App. 3d 435, 439 (1st Dist. 1995) (citing 765 ILCS 5/30). Likewise, recording a mortgage creates a mortgage lien in the first instance. 735 ILCS 5/15-1301.

It is well established that "the assignee of the debt, takes the security by the assignment, in the same condition, and to the extent it was held by the payee, at the time of the assignment, as a security for the debt assigned, and succeeds under it, to all rights of the assignor." *Sargent v. Howe*, 21 Ill. 147, 149-50 (1859) ("There can be no question of the right of the payee or assignee, to foreclose a mortgage given to secure the payment . . ."). As it relates to LLCs, members of an LLC have no ownership interest in the property of the LLC. *See Peabody-Waterside Dev., LLC v. Islands of Waterside, LLC, Regions Bank N.A., & Prairie Constr. Mgmt.*, 2013 IL App (5th) 120490, ¶ 9 ("[A]n LLC member owns only its membership interest in that LLC. This is the reason why a creditor of an LLC member cannot seize LLC property to satisfy that member's debt. The creditor can only attach the member's distributional interest in the LLC because that is all the

member owns.”). Finally, the holder of a perfected security interest has priority over the interests of unsecured creditors. *See White v. Funeral Fin. Sys.*, 2022 IL App (1st) 201385-U, ¶ 31.

Here, Wells Fargo recorded its mortgage secured by 5001 S. Drexel on April 23, 2014, assigned that recorded mortgage to Wilmington Trust on June 12, 2014, and Wilmington Trust recorded that assignment on June 27, 2014. (Exhibits A, B.) The mortgage assigned to Wilmington Trust was never released and remains of record. Accordingly, Wilmington Trust as the assignee of the recorded mortgage has a perfected security interest in 5001 S. Drexel. By contrast, the individual investors hold only their membership interests in SSDF2, which are not secured by 5001 S. Drexel because an LLC member only owns its membership interest in that LLC, “not . . . any ownership interest in the property, real or personal, of the LLC.” *Peabody-Waterside Dev., LLC*, 2013 IL App (5th) 120490 at ¶ 9. Therefore, Wilmington Trust has the only secured, perfected security interest in 5001 S. Drexel.

II. Wilmington Trust, as the Only Secured Claimant, is Entitled to Full Satisfaction of its Secured Lien.

Although the Receiver agrees Wilmington Trust holds a first priority position as to 5001 S. Drexel as the only claimant with a secured interest in the property, he nevertheless contends that Wilmington Trust’s recovery should be limited to the amount of its principal, less certain hold backs. Specifically, the Receiver recommends Wilmington Trust’s recovery should not include any principal held back in reserve, or “amounts paid by Equitybuild as interest, assumption, and processing fees.” (Dkt. 1626 at 9.) The Receiver argues this Court has equitable authority to limit Wilmington Trust’s recovery in this manner. Other than with respect to the reserve of

\$580,376.50,¹ Wilmington Trust does not agree. Equity—whether pursuant to general notions of the Court’s equitable discretion or pursuant to the purported Ponzi scheme presumption—does not authorize the Court to limit Wilmington Trust’s recovery of the entirety of its secured interest in 5001 S. Drexel because no other claimant has a secured interest in the property’s sale proceeds.

A. Equity does not permit the Court to limit Wilmington Trust’s recovery of its secured interest.

A secured creditor like Wilmington Trust is entitled to complete recovery of its secured interest as authorized under Illinois law. The Receiver’s assertion that the Court may override a secured mortgagee’s rights in the name of equity violates the fundamental precept that equity follows law. *See, e.g., In re BNT Terminals, Inc.*, 1991 Bankr. LEXIS 421, *20 (Bankr. N.D. Ill. Feb. 21, 1991) (declining to reinstate liens “premised upon ‘basic concepts of equity’” because “equity follows law and [defendant’s] lawyers have failed to articulate what the basic concepts of equity are that the Court should apply.”); *see also Proimos v. Fair Automotive Repair, Inc.*, 808 F.2d 1273, 1275 (7th Cir. 1987) (considering legal entitlement to an injunction, noting “[e]quity is no longer granted or withheld according to the chancellor’s sensibilities and his regard for the uprightness of the parties.”) In fact, applying the Receiver’s recommendation would violate basic tenets of secured transactions law, as well as notions of fairness and equity. Wilmington Trust’s lien attached to the property over three years prior to any Equitybuild affiliate having any interest in the property and no other claimant has a secured claim—senior or subordinate—in the property. The Receiver’s recommendation ignores a secured lender’s most basic and essential right—that it will have a first priority security interest in collateral should a borrower default.

¹ Specifically, Wilmington Trust does not contest the Receiver’s position that Wilmington Trust’s recovery from segregated sales proceeds should not include the \$580,376.50 held back in reserve because Wilmington Trust is in possession of those funds and is entitled to retain them and apply this amount to the amount of its debt.

The Receiver nevertheless contends “disallowance of post-receivership interest, penalties, fees, and other such amounts is appropriate.” (Dk. 1626 at 12-18.) However, the authorities the Receiver relies on are inapposite or distinguishable.

1. The Court does not have authority to limit Wilmington Trust’s recovery of interest.

The Receiver argues Wilmington Trust is not entitled to recover post-receivership interest. Relying on the Supreme Court’s decision in *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 163 (1946), the Receiver explains that “[a]s a general rule, in equity receiverships, interest on a debtor’s obligations ceases to accrue at the inception of the proceeding.” (Dkt. 1626 at 12 (“the *Vanston* Court made clear that interest may be disallowed in a federal equity receivership. . .”).) But *Vanston* was limited to a challenge to the potential recovery of interest on interest—a category of interest not sought here. *Id.* at 162-63.²

In any event, there are “two major exceptions” to the general rule against post-receivership (or bankruptcy) interest. *In re Fesco*, 996 F.2d 152, 155 (7th Cir 1993). As relevant here, one of those exceptions “allows post-petition interest for secured creditors whose security is worth more than the sum of the principal and all interest due” and is “codified at 11 U.S.C. § 506(b)” of the Bankruptcy Code. *Id.* at 156. Indeed, though *Vanston* “has never . . . been legislatively or judicially overruled,” it has been “superseded in the respects that section 506(b) provides.” *In re Urban Communicators PCS Ltd. P’ship*, 379 B.R. 232, 252-53 (Bankr. S.D.N.Y. 2007), *rev’d on other grounds*.

² The Receiver’s other cited cases are similarly distinguishable. *See SEC v. Capital Cove Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856 (C.D. Cal., Oct. 13, 2015) (limited to post-receivership default interest); *SEC v. Capital Consultants, LLC*, 2002 U.S. Dist. LEXIS 174856 (D. Or. May 24, 2002) (concerning post-petition interest); *In re Hollstrom*, 133 B.R. 535, 539 (Bankr. D. Colo. 1991) (concerning post-petition default interest); *Nicholas v. United States*, 384 U.S. 678 (1966) (concerning post-petition interest and penalties in Chapter IX bankruptcy).

For its part, Section 506(b), dictates that “[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim,” a secured claimant is allowed “interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.” 11 U.S.C. § 506(b). Section 506(b) applies with full force in these proceedings. Local Rule 66.1 provides “the administration of estates by receivers or other officers shall be similar to that in bankruptcy cases,” thus bringing Section 506(b) reasonably into the Court’s consideration. Moreover, as the Seventh Circuit has recognized, “when a specific [Bankruptcy] Code section addresses an issue, a court may not employ its equitable powers to achieve a result not contemplated by the Code.” *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993).

Further, at least one court³ has explicitly considered whether the law permits a court to ignore or override state law entitlements, including the right to interest, in the name of equity in the context of a receivership. *In re Real Prop. Located at [Redacted] Jupiter Drive*, confirms courts **do not** have such broad authority. No. 2:05-CV-01013-DB, 2007 WL 7652383, 2007 U.S. Dist. LEXIS 65276 (D. Utah June 7, 2007); *see also SEC v. Madison Real Estate Grp., LLC*, 647 F. Supp. 2d 1271 (D. Utah 2009) (holding that a receiver takes subject to all existing liens accruing under state law and refusing to apply principles of equity to put the interest of unsecured creditors

³ To be clear, the substance of the opinion in *Jupiter* was drafted by a Special Master, whom the court appointed to determine which investors were entitled to what portion of what remained in the investment pool. After conducting “a de novo review of the [Special Master’s] Report and Recommendation and the objections to it,” the court adopted the Special Master’s report. (*See In re Real Prop. Located at [Redacted] Jupiter Drive*, No. 2:05-CV-01013-DB (D. Utah Sept. 4, 2007), “Order Adopting the First Report and Recommendation of the Special Master,” Dkt. 272 at 1-2.) In light of the district court’s adoption of the Special Master’s report, and for ease of reference, Wilmington Trust refers to the *Jupiter* opinion as coming from the court.

over secured creditors). Indeed, *Jupiter* offers an in-depth treatment of the role of equity in the context of a receivership, with specific respect to entitlement to interest.⁴

Quoting the Supreme Court, *Jupiter* begins its analysis acknowledging it is “well-established that a ‘receiver appointed by a federal court takes [a] property subject to all liens, priorities or privileges existing or accruing under the laws of the State.’” *Id.* at *10 (quoting *Marshall v. New York*, 254 U.S. 380, 385 (1920)). *Jupiter* further observes that “[j]ust as the state law right of Lenders to the relative priority of their liens does not change because of the creation of a receivership, the general rule is that the right of the Lenders to receiver interest on the loans that are secured by those liens also is not affected. ‘The appointment of a receiver of the property of the litigant by a court of equity . . . does not deprive a claim of any interest bearing rights it may have.’” *Id.* at *21 (quoting *Clark on Receivers* § 660 (1959)). Moreover, *Jupiter* recognizes that the “United States Constitution specifically states that contractual rights are not to be impaired” and “are not to be lightly disregarded.” *Id.* at *26. Thus having “reviewed the cases and the treatises,” *Jupiter* concludes “it appears that the applicable law is as follows: The institution of a receivership does not stop the running of interest contracted for by a secured party any more than it interferes with the priority afforded such a party by state law. *A general call on the ‘equitable’ powers of the court is insufficient to override clear state law entitlements.*” *Id.* at *23 (citing *Grubb v. FDIC*, 833 F.2d 222 (10th Cir. 1987) and *Clark on Receivers* § 660) (emphasis added).

As in *Jupiter*, the Court should decline the Receiver’s invitation to disregard Wilmington Trust’s rights as a secured creditor under Illinois law in favor of general notions of equity. Illinois

⁴ Other district courts have favorably cited *Jupiter*’s discussion regarding the role of equity in the context of a receivership since its publication. See *SEC v. Detroit Mem’l Partners, LLC*, 2016 U.S. Dist. LEXIS 15444 (N.D. Ga. Nov. 8, 2016); *SEC v. Mgmt. Solutions*, 2013 U.S. Dist. LEXIS 21552 (D. Utah Feb. 15, 2013); *SEC v. Madison Real Estate Grp., LLC*, 647 F. Supp. 2d 1271 (D. Utah 2009).

law is clear that the recording of a mortgage creates a security interest in real estate for the payment of the underlying indebtedness. *See* 765 ILCS 5/11 (“Such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient mortgage in fee to *secure the payment of the moneys therein specified.*”) (emphasis added); *see also Ogle v. Koerner*, 140 Ill. 170, 179 (1892) (“A mortgage. . . vests in the party secured a lien upon the mortgaged premises” and “[b]y virtue of that lien the mortgagee is entitled to . . . the proceeds of the sale [of the property in foreclosure] *applied to the payment of the debt secured.*” (emphasis added)). Wilmington Trust’s assigned mortgage entitles it to the entirety of its secured debt as specified in its loan documents, which expressly impose interest. (*See* Exhibit D, § 2.5.)

Further, as the *only* lender and claimant with a secured claim, there is no basis in equity or otherwise to limit Wilmington Trust’s recovery. Notwithstanding the individual investors’ unsecured status, the Receiver argues that “[a]dditional equitable considerations are present here given the fact that there are numerous unsophisticated individual lenders who were left with unsecured claims despite having investments that had the patina of a secured investment.” (Dkt. 1626 at 19.) But as the Receiver also explains, the individual investors were “[p]resented [with] and executed” an Operating Agreement for 5001 S. Drexel LLC, which specifies any interest in the LLC is a membership interest. (*See id.* Ex 13 at p. 1, first line of agreement: “THE MEMBERSHIP INTERESTS DESCRIBED IN THIS AGREEMENT...” (capitalized emphasis in original)). Accordingly, the unsecured investors were aware of the unsecured nature of the equity interest they acquired from Equitybuild and, moreover, were chargeable with notice of Wilmington Trust’s mortgage, which encumbered the property since 2014.

Wilmington Trust is thus entitled to interest on its loan. Wilmington Trust should be entitled to calculate and receive interest on the entire outstanding principal balance of the loan

before any proposed setoff, given that Wilmington Trust could not setoff any funds prior to this time. (See Dkt. 16 at 3; *see also* Dkt. 1626 at 14) If for any reason the Court disagrees, at a minimum, Wilmington Trust would be entitled to recover interest calculated on the outstanding principal balance of the loan after deduction of any reserves or other sums determined by the Court.

2. The Court does not have authority to limit Wilmington Trust's recovery of other amounts specified in its mortgage, including fees.

Separate from the recovery of post-receivership interest, the Receiver recommends “that requests for late fees, penalties (pre-payment or otherwise), attorneys['] fees, and all such other costs also be denied for all claimants” “consistent with the authorities” the Receiver relies on regarding post-receivership interest. (Dkt. 1626 at 17.) These cases do not discuss such “other amounts” beyond post-receivership interest. *Jupiter*, however, does.

As a threshold matter, *Jupiter* recognizes the “manifest inequality” between secured and unsecured creditors under the law. Quoting the Supreme Court, *Jupiter* observed that “to the extent that one debt is secured and another is not there is manifestly an inequality of rights between the secured and unsecured creditors, which cannot be affected by the principal of equality of distribution.” *Id.* at *11 (quoting *Ticonic Nat'l Bank*, 303 U.S. at 411-12)). Indeed, this forms the basic right of a secured lender versus an unsecured claimant. To hold otherwise renders a security interest meaningless. Further, *Jupiter* referenced the general rule announced by the Supreme Court that “[w]here there are claims of different rank or dignity and there are sufficient assets of the estate available to pay claims of a higher rank in full interest accruing during receivership, interest will be paid on such claims to the date of payment, even though what remains is insufficient to pay claims of a lower rank.” *Id.* at *25 (citing *Board of Comm'rs of Sweetwater County Wyo. v. Bernardin's* quotation of *Am. Iron & Steel Mfg. Co. v. Seaboard Air Line Railway*, 233 U.S. 261, 268 (1914)).

Notably, the Supreme Court in *Seaboard* referenced *First Nat'l Bank v. Ewing*, 103 F. 168, 190 (5th Cir. 1900), as a citation for the rule, which specifically extended the same logic to permit penalties and costs. Finally, where “[t]he facts are clear, the rights of the parties under the law certain, and the only real inequity is that [the defrauding party] was able to persuade [unsecured lenders] to give him money for his project without their demanding security . . . [t]he consequences may be harsh for the [unsecured lenders], but the law is clear. Equity has its limits.” *Id.* at *27.

Bearing these principles in mind, the only recovery limitations *Jupiter* was willing to endorse in the name of equity were fees as among the *same class of secured creditors*. Specifically, *Jupiter* found “it equitable that *each secured* creditor only be able to recover simple interest” notwithstanding “that some of the lenders [in the *same secured class*] are contractually entitled to additional penalties.” 2007 U.S. Dist. LEXIS 65276 at *28 (emphasis added). Accordingly, *Jupiter* supports the principle that secured lenders should recover all amounts to which they are contractually entitled, including all fees and other amounts, over *unsecured* claimants who have “manifestly [unequal] rights . . . which cannot be affected by the principal of equality of distribution.” *Id.* at*11 (quoting *Ticonic Nat'l Bank*, 303 U.S. at 411-12)). This makes sense because Wilmington Trust, a secured creditor, is in a separate creditor class than the unsecured investor creditors.

Consistent with the logic of *Jupiter*, Section 506(b) also requires a secured claimant such as Wilmington Trust to receive all amounts due under its loan agreement, up to the amount of its secured collateral. *See* 11 U.S.C. § 506(b); *see also In re Cella III, LLC*, 625 B.R. 19, 25–26 (Bankr. E.D. La. 2020) (holding secured creditors are secured and entitled to recover interest up to the value of the property); *In re Croatan Surf Club, LLC*, No. 11-00194-8-SWH, 2012 Bankr. LEXIS 2369, at *6 (Bankr. E.D.N.C. May 25, 2012) (holding same); *In re Broomall Printing*

Corp., 131 B.R. 32, 35–37 (Bankr. D. Md. 1991) (holding same); *Liberty Nat. Bank & Tr. Co. of Louisville v. George*, 70 B.R. 312, 313 (W.D. Ky. 1987) (holding same).

Wilmington Trust has the only secured interest in the property and its Loan Agreement specifies the debt secured by its loan. (See Exhibit D, §§ 2.5-2.7; 16.5-16.6.) Thus, consistent with the “general theme [that] seems to ground all the case law and the treatises on receiverships” that “equity can be relied upon as a basis for declining to make minute calculations of legal rights in the face of overriding complexity and a lack of certainty regarding the facts,” does not apply here where Wilmington Trust’s rights are clear as a matter of law. See *Jupiter*, 2007 U.S. Dist. LEXIS 65276, at *26-27. Accordingly, Wilmington Trust is entitled to recover its entire secured interest—including principal, interest, and all amounts and fees as articulated in the Loan Agreement—in 5001 S. Drexel.

B. The Receiver Has Not Met His Burden Of Proving That The Ponzi Scheme Presumption Applies As To Wilmington Trust’s Loan.

The Receiver improperly assumes the Ponzi scheme presumption applies to trigger the so-called “netting rule.” See *In re Taneja*, 2012 Bankr. LEXIS 3554, *14 (Bankr. E.D. Va. July 30, 2012) (“A party seeking to raise a [Ponzi scheme] presumption has the burden of proving the predicate facts that give rise to the presumption.”). Specifically, the Receiver concludes “[w]ith the Cohens having implemented a Ponzi scheme,” the “netting rule” applies, pursuant to which “amounts transferred by the Ponzi scheme perpetrator to the investor are netted against the initial amounts invested by that individual.” (Dkt. 1626 at 18.)

In support of his argument, the Receiver cites two cases purporting to support the notion that netting should apply without the Receiver having met his burden of proof. (Dkt. 1626 at 18-19.) But both of these cases analyze whether netting was appropriate *assuming proof and application of the applicable Uniform Fraudulent Transfer statute had already been established.*

See Scholes v. Lehmann, 56 F.3d 750, 757-58 (7th Cir. 1995) (analyzing whether netting was appropriate by applying predecessor statute to Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160, while also discussing analysis under current statute); *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008) (analyzing netting while applying California’s Uniform Fraudulent Transfer Act). Indeed, to establish the Ponzi scheme presumption “the Receiver must prove that a Ponzi scheme existed.” *SEC v. Mgmt. Solutions, Inc.*, 2013 U.S. Dist. LEXIS 120277, *26 (D. Utah Aug. 22, 2013).

To meet this burden, the Receiver “must prove by a preponderance of the evidence the *sine qua non* of a Ponzi scheme: that returns to earlier investors were paid by funds from later investors.” *Id.* at *66. Critically, “[a]n effort to apply such a ‘Ponzi presumption’ in all securities fraud cases which have some Ponzi scheme characteristics is inappropriate.” *Id.* at *70 (emphasis in original). “[P]roposed blanket finding[s]” that a Ponzi scheme existed in complex cases such as this where “it is difficult to characterize *all* of [the] transactions as Ponzi-related” may unfairly “penalize innocent action . . . not for Ponzi-related and inappropriate action on their part, if any, but for the [Cohens’] actions, not their own.” *Id.* at *70-71 (emphasis added). Accordingly, the “time, context, the nature of the specific transactions, and the knowledge of the parties” need “to be examined on an individual basis” before the Receiver has met his burden to establish the existence of a Ponzi scheme. *Id.* at *82. The Receiver has stated numerous times that this receivership is complex and involves numerous properties, parties, and entities. Allowing the Receiver to summarily conclude that the Ponzi-scheme presumption applies without meeting his burden contradicts the purpose and requirements of the Ponzi presumption.

The Receiver has not undertaken the requisite analysis to prove by a preponderance of the evidence that Wilmington Trust’s transaction, which was made in 2014 to a prior mortgagor and later assumed by an Equitybuild entity, was Ponzi-related, nor has the Receiver even disclosed any

intent to pursue an avoidance claim on 5001 S. Drexel. Instead, the Receiver contends the “Court has repeatedly found that the Cohens engaged in [a] Ponzi scheme,” referencing the Cohens’ consent judgment and a handful of facts specific to properties unrelated to Group 5 or 5001 S. Drexel. (*See* Dkt. 1626 at 20.) This purported evidence is insufficient to meet his burden. While the Cohens’ consent judgment is potentially sufficient to establish proof the Cohens engaged in some Ponzi activity,⁵ it does not obviate the need for “examin[ation] on an individual basis” as “to intervening objectors and others who may be subject to claw back,” such as *Wilmington Trust. Management Solutions*, 2013 U.S. Dist. LEXIS 120277 at *72. Similarly, evidence of Ponzi-like activity in relation to *other* transactions does not suffice. As the court in *Management Solutions* described:

Burdensome as it may be, fairness demands individual examination. Due process does as well. Presumption is but a tool. It is not a shortcut or substitute for proof. In the finding of Ponzi schemes, it is applicable where appropriate and if not, then proof of inappropriate activity on the part of a target, not the mere affixing of a label by the Receiver, is required.

Id. at *82.

Accordingly, “[l]imiting distributions on [5001 S. Drexel] to the return of principal less any amounts already recovered from Equitybuild” is premature given that the Receiver has not met his burden in establishing the Ponzi scheme presumption applies under the Illinois Uniform

⁵ *Management Solutions* noted that the Ponzi scheme presumption “finding requested by the Receiver [wa]s unnecessary [as to the individual defendants charged with Ponzi scheme activity by the SEC] because of their agreements with the SEC and the final consent judgments entered by the Court,” 2013 U.S. Dist. LEXIS 120277 at *72, but, as to non-parties, consent judgments are not admissible evidence of the allegations stated therein. *See, e.g., Carpenters Health & Welfare Fund v. The Coca-Cola Co.*, 2008 U.S. Dist. LEXIS 112503, *14 (N.D. Ga. Apr. 23, 2008) (a consent judgment “falls squarely into the class of evidence deemed inadmissible pursuant to Rule 408”). This rule serves the “high public policy value of encouraging entities . . . to settle their disputes with . . . governmental agencies,” and avoids the “chilling effect” that “would likely” result from admitting the consent judgment as evidence of wrongdoing by private litigants. *Id.* at *3.

Fraudulent Transfer Act, 740 ILCS 160 *et seq.*, to the reserves and distributions made to Wilmington Trust in connection with 5001 S. Drexel to trigger the “netting rule.” (Dkt. 1626 at 21.)

In any event, the time for the Receiver to disclose a fraudulent transfer claim against Wilmington Trust has passed. (*See* Dkt. 1544, 1580.) Without the disclosure of a claim against Wilmington Trust under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160, or otherwise, the Receiver cannot meet his burden to prove such a claim as required to trigger the “netting rule” and, in any case, the Receiver’s cited case law is inapplicable. Under such circumstances, the netting rule should not apply to Wilmington Trust’s secured claim.

CONCLUSION

For the aforementioned reasons, Wilmington Trust’s assigned mortgage interest in 5001 S. Drexel is the only secured interest in that property and Wilmington Trust is therefore entitled to priority as a matter of law. As the only secured claimant, Wilmington Trust is further entitled to receive the funds liquidated by the Receiver’s sale of 5001 S. Drexel in the full amounts secured by its mortgage, as specified in its loan documents. *See, e.g.*, Wilmington Trust’s Proof of Claim, at 125; *see also* Exhibit D.

Dated: April 10, 2024

Respectfully submitted,

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National Association, as Trustee for the
Registered Holders of Wells Fargo
Commercial Mortgage Trust 2014-LC16,
Commercial Mortgage Pass Through
Certificates Series 2014-LC16*

EXHIBIT A

8961556 DOKK

**Illinois Anti-Predatory
Lending Database
Program**

Certificate of Exemption



Doc#: 1411318041 **Fee:** \$82.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/23/2014 11:36 AM Pg: 1 of 23

**Report Mortgage Fraud
800-532-8785**

The property identified as: **PIN:** 20-11-114-001-0000

Address:

Street: 5001 S. DREXEL BLVD.

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60615

Lender: WELLS FARGO BANK, NATIONAL ASSOCIATION

Borrower: OHIO COMMONS LLC

Loan / Mortgage Amount: \$2,300,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: E52FCA18-8D39-402A-922A-E50865CDE57E

Execution date: 04/10/2014

Loan No. 86-0923146

OHIO COMMONS LLC, as mortgagor,

to

WELLS FARGO BANK, NATIONAL ASSOCIATION, as mortgagee

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

Dated: As of April 22, 2014
Location: 5001 S. Drexel Boulevard, Chicago, Illinois 60615
County: Cook

PREPARED FOR OR BY AND
UPON RECORDATION RETURN TO:

WELLS FARGO BANK, NATIONAL ASSOCIATION
301 South College Street, 12th Floor
Charlotte, North Carolina 28202
MAC: D1053-124
Attention: Alicia Fritz

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of this 22nd day of April, 2014, by **OHIO COMMONS LLC**, an Illinois limited liability company, having its principal place of business at 351 W. Chicago Avenue, Chicago, Illinois 60654, as mortgagor (together with its permitted successors and assigns, "Borrower"), to **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (together with its successors and assigns, "Lender"), as mortgagee. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

RECITALS:

This Security Instrument is given to Lender to secure a loan (the "**Loan**") advanced pursuant to that certain Loan Agreement, dated as of the date hereof, by and between Borrower and Lender (as the same may have been or may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), which such Loan is evidenced by, among other things, that certain Promissory Note, dated as of the date hereof, executed by Borrower in favor of Lender (together with all extensions, renewals, replacements, restatements or other modifications thereof, whether one or more being hereinafter collectively referred to as the "**Note**");

Borrower desires to secure the payment of the outstanding principal amount set forth in, and evidenced by, the Loan Agreement and the Note together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, the Loan Agreement, this Security Instrument or any of the other Loan Documents (defined below) (collectively, the "**Debt**") and the performance of all of the obligations due under the Note, the Loan Agreement, this Security Instrument and all other documents, agreements and certificates executed and/or delivered in connection with the Loan (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the "**Loan Documents**"); and

This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance of the obligations due thereunder and under the other Loan Documents, including, without limitation, the Note, are secured hereby in accordance with the terms hereof.

Article 1 - GRANTS OF SECURITY

Section 1.1. Property Mortgaged. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Lender in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (collectively, the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements, and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements, and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture, software used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the “**Personal Property**”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the “**Uniform Commercial Code**”), and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws (collectively, the “**Leases**”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional 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, 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 Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) Insurance Proceeds. All insurance proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the

proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property (collectively, the “**Insurance Proceeds**”);

(h) Condemnation Awards. All condemnation awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of any taking or condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property (collectively, the “**Awards**”);

(i) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(l) Intangibles. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including without limitation, the Accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(n) Proceeds. All proceeds of any of the foregoing items set forth in subsections (a) through (m) including, without limitation, Insurance Proceeds and Awards, whether cash, liquidation or other claims or otherwise; and

(o) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (n) above.

Section 1.2. Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower’s right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement and Section 8.1(h) of this Security Instrument, Lender grants to Borrower a revocable license to (i) collect, receive, use and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums, and (ii) enforce the terms of, and perform the obligations of the landlord under, the Leases.

Section 1.3. Security Agreement. This Security Instrument is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code.

Section 1.4. Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county where such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5. Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, forever; WITH POWER OF SALE, to secure payment to Lender of the Debt at the time and in the manner provided for its payment in the Note and the Loan Agreement; PROVIDED, HOWEVER, these presents are upon the express condition that, if Lender shall be well and truly paid the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, if Borrower shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void.

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1. Debt. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 2.2. Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the “**Other Obligations**”): (a) all other obligations of Borrower contained herein; (b) each obligation of Borrower contained in the Note, the Loan Agreement and any other Loan Document; and (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.3. Debt and Other Obligations. Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the “**Obligations.**”

Section 2.4. Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 2.5. Incorporation by Reference. All the covenants, conditions and agreements contained in the Loan Agreement, the Note and all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 3 - PROPERTY COVENANTS

Section 3.1. Compliance with Loan Agreement. Borrower shall comply with all covenants set forth in the Loan Agreement relating to the Property, including, without limitation, insurance, taxes and other charges, payment for labor and materials and leases.

Section 3.2. Warranty of Title. Borrower has good, indefeasible, marketable and insurable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements except for the Permitted Encumbrances, such other liens as are permitted pursuant to the Loan Documents and the liens created by the Loan Documents. This Security Instrument, 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 legal, enforceable, valid, and perfected first priority lien on the Property, subject only to Permitted Encumbrances and the liens created by the Loan Documents and (b) a legal, enforceable, valid, and perfected first priority security interests in and to, and legal, enforceable, valid, and perfected first priority 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. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all Persons whomsoever.

Article 4 - FURTHER ASSURANCES

Section 4.1. Compliance with Loan Agreement. Borrower shall comply with all covenants set forth in the Loan Agreement relating to acts or other further assurances to be made on the part of Borrower in order to protect and perfect the lien or security interest hereof upon, and in the interest of Lender in, the Property.

Section 4.2. Authorization to File Financing Statements; Power of Attorney. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property and as necessary or required in connection herewith. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any such documents and otherwise to carry out the purposes of this Section 4.2, to the extent that Borrower's authorization above is not sufficient and Borrower fails or refuses to promptly execute such documents. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Article 5 - DUE ON SALE/ENCUMBRANCE

Section 5.1. No Sale/Encumbrance. Except in accordance with the express terms and conditions contained in the Loan Agreement, Borrower shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, Borrower, any constituent owner or other holder of a direct or indirect equity

interest in Borrower, any indemnitor or other guarantor of the Loan, any constituent owner or other holder of a direct or indirect equity interest in such indemnitor or guarantor, any manager or operating lessee of the Property that is affiliated with Borrower or any constituent owner or other holder of a direct or indirect equity interest in such manager or such operating lessee.

Article 6 - PREPAYMENT; RELEASE OF PROPERTY

Section 6.1. Prepayment. The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

Section 6.2. Release of Property. Borrower shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with terms and conditions of the Loan Agreement.

Article 7 - DEFAULT

Section 7.1. Event of Default. The term “**Event of Default**” as used in this Security Instrument shall have the meaning assigned to such term in the Loan Agreement.

Article 8 - RIGHTS AND REMEDIES UPON DEFAULT

Section 8.1. Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice to Borrower, which notice Borrower expressly waives, and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor or indemnitor under the Loan or any other Person liable for the payment of the Debt and whose appointment Borrower expressly consents to take possession of and to operate the Property, to collect the Rents and to otherwise protect and preserve the Property;

(h) the license granted to Borrower under Section 1.2 of this Security Instrument shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(j) surrender the insurance policies maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for such insurance policies and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums;

(k) apply the undisbursed balance of any deposit made by Borrower with Lender in connection with the restoration of the Property after a casualty thereto or condemnation thereof, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; and/or

(l) pursue such other remedies as Lender may have under Applicable Law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 10.1(g) of the Loan Agreement shall occur (with respect to Borrower only), the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 8.2. Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 8.3. Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at any default rate specified in the Loan Agreement, if any (the "**Default Rate**"), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender.

Section 8.4. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 8.5. Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 8.6. Other Rights, etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note, the Loan Agreement or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument, the Loan Agreement or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the insurance policies required to be maintained pursuant to the Loan Agreement, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 8.7. Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 8.8. Right of Entry. Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 8.9. Bankruptcy. (a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code (defined below).

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

Section 8.10. Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such

former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of the Other Obligations.

Article 9 - ENVIRONMENTAL HAZARDS

Section 9.1. Environmental Covenants. Borrower has provided representations, warranties and covenants regarding environmental matters set forth in the Environmental Indemnity and Borrower shall comply with the aforesaid covenants regarding environmental matters.

Article 10 - WAIVERS

Section 10.1. Marshalling and Other Matters. Borrower hereby waives, to the extent permitted by law, the benefit of all Applicable Law now or hereafter in force regarding appraisal, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by Applicable Law.

Section 10.2. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not permitted by Applicable Law to waive its right to receive notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.3. Sole Discretion of Lender. Whenever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.4. Waiver of Trial by Jury. **BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDER AND BORROWER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.**

Section 10.5. Waiver of Foreclosure Defense. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

Article 11 - LENDER AND NOTICES

Section 11.1. Failure to Act. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the failure of Lender to take any action hereunder or under any other Loan Document shall not (i) be deemed to be a waiver of any term or condition of this Security Instrument or any of the other Loan Documents, (ii) adversely effect any rights of Lender hereunder or under any other Loan Document and (iii) relieve Borrower of any of Borrower's obligations hereunder or under any other Loan Document.

Section 11.2. Notices. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Loan Agreement.

Notices to Borrower shall be sent as follows:

Ohio Commons LLC
351 W. Chicago Avenue
Chicago, Illinois 60654
Attention: Erik Larson
Facsimile No.: (312) 506-3278

with a copy to:

Brotschul Potts LLC
203 W. Monroe, Suite 230
Chicago, Illinois 60606
Attention: Matthew B. Brotschul, Esq.
Facsimile No.: (312) 277-3278

Notices to Lender shall be sent as follows:

Wells Fargo Bank, National Association
1901 Harrison Street, 2nd Floor
MAC A0227-020
Oakland, California 94612
Attention: Commercial Mortgage Servicing
Facsimile No.: (866) 359-5352

with a copy to:

Winstead PC
201 North Tryon Street, Suite 2000
Charlotte, North Carolina 28202
Attention: David Iacuzio, Esq.
Facsimile No.: (704) 339-1701

Article 12 - APPLICABLE LAW

Section 12.1. Governing Law. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and Applicable Laws of the United States of America.

Section 12.2. Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 13 - DEFINITIONS

Section 13.1. General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any of Lender's successors and assigns," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument", the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 14 - MISCELLANEOUS PROVISIONS

Section 14.1. No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower, Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2. Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 14.3. Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 14.4. Headings, etc. The headings and captions of various sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.5. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 14.6. Entire Agreement. This Security Instrument 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, are superseded by the terms of this Security Instrument and the other Loan Documents.

Section 14.7. Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Article 15 - STATE-SPECIFIC PROVISIONS

Section 15.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 15 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 15 shall control and be binding.

Section 15.2. This Security Instrument is hereby entitled "Mortgage, Security Agreement and Fixture Filing". The following legend is hereby added to the first page hereof:

"THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT."

Section 15.3. THE FOLLOWING NOTICE IS GIVEN PURSUANT TO THE ILLINOIS COLLATERAL PROTECTION ACT. AS USED HEREIN, THE TERMS "YOU" AND "YOUR" SHALL REFER TO BORROWER AND THE TERMS "WE" AND "US" SHALL REFER TO LENDER. UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENT WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTERESTS IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.

Section 15.4. In the first Recital on page 1 hereof, the following is hereby inserted at the end of the provision after the words “referred to as the “**Note**””:

“in the original principal amount of \$2,300,000.00 accruing interest at the Interest Rate of five and three tenths percent (5.30%) in accordance with the terms and provisions of the Loan Agreement, which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on May 1, 2024.”

Section 15.5. The Loan secured hereby shall in no event exceed an amount equal to two hundred percent (200%) of the face amount of the Note.

Section 15.6. Borrower hereby waives, to the extent now or hereafter permitted by law, all rights of redemption and reinstatement of this Security Instrument pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (“**IMFL**”), including without limitation Section 15-1601(b) of IMFL, on behalf of itself and all those taking by, through or under Borrower. Borrower acknowledges that the Property does not constitute “agricultural real estate,” as such term is defined in Section 15-1201 of IMFL or “residential real estate,” as such term is defined in Section 15-1219 of IMFL.

Section 15.7. In the event that any provision of this Security Instrument shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with IMFL. If any provision of this Security Instrument shall grant to Lender any rights or remedies upon any Event of Default by Borrower which are more limited than the rights that would otherwise be vested in Lender under IMFL in the absence of said provision, Lender shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Loan secured by this Security Instrument or by the judgment of foreclosure.

Section 15.8. Borrower shall include a “no lien” provision in any property management agreement hereafter entered into by Borrower with a property manager for the Property, whereby the Property manager waives and releases any and all mechanics’ lien rights that the Property manager, or anyone claiming through or under the Property manager, may have pursuant to 770 ILCS 60/1.

Section 15.9. (a) This Security Instrument also constitutes a financing statement for the purpose of Section 9-502 of the Illinois Uniform Commercial Code, 810 ILCS 5/9-502, and shall constitute a “fixture filing” under such statute and shall be filed in the real estate records of Cook County, Illinois.

Name of Debtor:	OHIO COMMONS LLC, an Illinois limited liability company
Debtor’s Mailing Address:	351 W. Chicago Avenue, Chicago, Illinois 60654
Address of Property:	5001-5005 South Drexel Boulevard/909-919 East 50 th Street, Chicago, Illinois 60615
Name of Secured Party:	WELLS FARGO BANK, NATIONAL ASSOCIATION

Address of Secured Party: Wells Fargo Center, 1901 Harrison Street, 2nd Floor,
Oakland, California 94612

This financing statement covers the following types or items of property: the Property described in this instrument, and all other items of personal property and fixtures now or at any time hereafter owned by Borrower and used in connection with the Property.

(b) Some of the above goods are or are to become fixtures on the Property described herein. Borrower is the record owner of the Property described herein upon which the foregoing fixtures and other items and types of property are located. The Land to which the fixtures and other Property relates is described in Exhibit A attached hereto and made a part hereof.

Section 15.10. Borrower covenants and agrees that all of the proceeds of the Loan secured by this Security Instrument will be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured hereby constitutes: (i) a “business loan,” as that term is used in, and for all purposes of, the Illinois Interest Act, 815 ILCS 205/0.01 et seq., including Section 4(1)(c) thereof; and (ii) a “loan secured by a mortgage on real estate” within the purview and operation of Section 205/4(1)(I) thereof.

Section 15.11. All agreements between Borrower and Lender (including, without limitation, those contained in this Security Instrument, the Note and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the Loan, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the Loan secured hereby (whether or not then due and payable) and not to the payment of interest.

Section 15.12. Wherever provision is made in this Security Instrument or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Lender shall continue in Lender as judgment creditor or mortgagee until confirmation of sale.

Section 15.13. (a) All advances, disbursements and expenditures made by Lender before and during a foreclosure of this Security Instrument, and before and after judgment of foreclosure therein, and at any time prior to sale of the Property, and, where applicable, after sale of the Property, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or the Loan Agreement or by IMFL (collectively “**Protective Advances**”) shall have the benefit of all applicable provisions of IMFL, including those provisions of IMFL hereinbelow referred to:

(i) all advances by Lender in accordance with the terms of this Security Instrument to: (1) preserve or maintain, repair, restore or rebuild the Improvements upon the Property; (2) preserve the lien of this Security Instrument or the priority thereof; or (3) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 15-1302 of IMFL;

(ii) payments by Lender of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (2) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other obligations authorized by Lender; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of IMFL;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Security Instrument as referred to in Sections 15-1504(d)(2) and 15-1510 of IMFL; (2) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Security Instrument or arising from the interest of Lender hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Security Instrument or the Property;

(v) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of IMFL;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of IMFL;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Lender's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Property imposed by Subsection (c)(1) of Section 15-1704 of IMFL; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (7) if the loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Improvements for amounts required to be paid by Borrower; and (9) if this Security Instrument is insured, payments of FHA or private mortgage insurance required to keep insurance in force.

(b) All Protective Advances shall be additional Debt secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance thereof until paid at the rate due and payable after an Event of Default under the terms of the Note and the Loan Agreement.

(c) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b) of Section 15-1302 of IMFL.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of IMFL, apply to and be included in:

(i) determination of the amount of Debt secured by this Security Instrument at any time;

(ii) the Debt found due and owing pursuant to this Security Instrument in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Debt becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) if right of redemption has not been waived by Borrower in this Security Instrument, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of IMFL;

(iv) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of IMFL;

(v) application of income in the hands of any receiver or mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of IMFL.

(e) In addition to any provision of this Security Instrument authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of IMFL, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of IMFL.

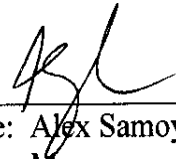
[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by the undersigned as of the day and year first above written.

BORROWER:

OHIO COMMONS LLC, an Illinois limited liability company

By: Cedar Street Capital Partners LLC,
a Delaware limited liability company,
its Managing Member

By: 
Name: Alex Samoylovich
Title: Manager

ACKNOWLEDGMENT

STATE OF ILLINOIS

COUNTY OF COOK

This instrument was acknowledged before me on April 8, 2014, by Alex Samoylovich, the Manager of Cedar Street Capital Partners LLC, a Delaware limited liability company, the Managing Member of OHIO COMMONS LLC, an Illinois limited liability company, on behalf of said limited liability company.



Scott G. Perdue
Notary Public

Printed Name: SCOTT G. PERDUE

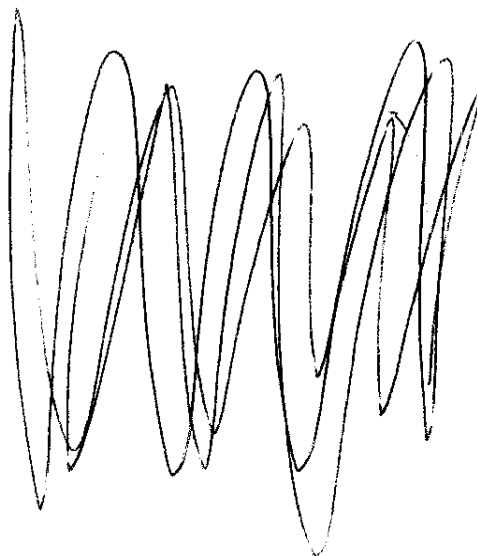
My Commission Expires:

4/26/2017

EXHIBIT A

LEGAL DESCRIPTION

[See Attached]



STREET ADDRESS: 5001 S DREXEL ⁴⁰⁰⁶¹⁵
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 20-11-114-001-0000

LEGAL DESCRIPTION:

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 TO 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXHIBIT B

THIS DOCUMENT PREPARED BY AND
UPON RECORDATION RETURN TO:
ANDERSON, McCOY & ORTA, P.C.
100 North Broadway, Suite 2600
Oklahoma City, Oklahoma 73102
Telephone: 888-236-0007
Cook County, Illinois
Parcel Number(s): 20-11-114-001-0000

**ASSIGNMENT OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

KNOW THAT

WELLS FARGO BANK, NATIONAL ASSOCIATION, having an address at Wells Fargo Center, 1901 Harrison Street, 2nd Floor, MAC A0227-020, Oakland, CA 94612 ("Assignor"),

For valuable consideration given by:

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF WELLS FARGO COMMERCIAL MORTGAGE TRUST 2014-LC16, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2014-LC16, having an address at 1100 North Market Street, Wilmington, DE 19890 ("Assignee"),

the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby grant, bargain, sell, convey, assign, transfer, and set over, without recourse, representation and warranty, all of Assignor's right, title and interest, of any kind whatsoever, in and to the subject note(s) and loan documents, and including that of mortgagee, beneficiary, payee, assignee or secured party (as the case may be), in and to the following:

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as same may have been amended) by OHIO COMMONS LLC, an Illinois limited liability company ("Borrower"), to Assignor, and recorded April 23, 2014, as Document Number 1411318041, in the Real Estate Records pertaining to the land situated in the State of Illinois, County of Cook ("Real Estate Records");

Reference No.: 2325.044
Loan/File Name: Drexel Apartments
Pool: WFCM 2014-LC16

covering the property described on EXHIBIT "A" attached hereto and made a part hereof;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns of the Assignee forever.

(The remainder of this page has been intentionally left blank.)

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed this 12 day of June, 2014.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: Brigid M. Mattingly
Name: Brigid M. Mattingly
Title: Executive Vice President

ACKNOWLEDGEMENT

STATE OF ILLINOIS §
 §
COUNTY OF COOK §

On the 12th day of June, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Brigid M. Mattingly, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, as Executive Vice President of Wells Fargo Bank, National Association, a national banking association, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument, and that such individual made such appearance before the undersigned.

WITNESS my hand and official seal.

Signature: Kathy B. Pekal
Notary Public

My Commission Expires: 5-4-15



Reference No.: 2325.044
Loan/File Name: Drexel Apartments
Pool: WFCM 2014-LC16

EXHIBIT A

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 TO 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

5001-5005 South Drexel Boulevard, Chicago, IL 60615

EXHIBIT C



1734742826

Doc# 1734742826 Fee \$102.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/13/2017 02:02 PM PG: 1 OF 32

Instrument Prepared By:

Kilpatrick Townsend & Stockton LLP
2001 Ross Avenue, Suite 4400
Dallas, Texas 75201
Attn: Merri McCoy, Esq.
Telephone: (214) 922-7113
Facsimile: (214) 922-7101
Email: mhmcocoy@kilpatricktownsend.com

And When Recorded Mail To:

Kilpatrick Townsend & Stockton LLP
2001 Ross Avenue, Suite 4400
Dallas, Texas 75201
Attn: Merri McCoy, Esq.
Telephone: (214) 922-7113
Facsimile: (214) 922-7101
Email: mhmcocoy@kilpatricktownsend.com

Cook County, Illinois
Parcel ID: 20-11-114-001-0000

3/4

Space Above This Line for Recorder's Use

8977743 LK

ASSUMPTION AGREEMENT
(WFCM 2014-LC16; Loan No. M860923146)

THIS ASSUMPTION AGREEMENT ("Agreement") is entered into and effective as of December 1st, 2017 (the "Effective Date"), among WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF WELLS FARGO COMMERCIAL MORTGAGE TRUST 2014-LC16, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2014-LC16 ("Lender"), having an address in c/o Wells Fargo Bank, N.A., Wells Fargo Commercial Mortgage Servicing, Three Wells Fargo, 401 S. Tryon Street, 8th Floor, MAC D1050-084, Charlotte, NC 28202. Re: Drexel Apartments; Loan No. M860923146, OHIO COMMONS LLC, an Illinois limited liability company ("Original Borrower"), having an address at 351 W. Chicago Avenue, Chicago, Illinois 60654, Attn: Erik Larson, and 5001 S. DREXEL LLC, a Delaware limited liability company ("New Borrower"), having an address at 201 N. Westshore, Unit 1501, Chicago, IL 60601, Attn: Jerome H. Cohen. Original Borrower and New Borrower are sometimes collectively referred to as "Borrower Parties".

PRELIMINARY STATEMENT

A. Original Borrower is the current owner of fee title to the real property ("Land") and the buildings and improvements thereon ("Improvements"), commonly known as "Drexel Apartments" located in the City of Chicago, County of Cook, State of Illinois, more particularly described in the attached Exhibit A (the Land and the Improvements are collectively referred to as the "Property").

Box 400

Drexel Apartments
Assumption Agreement
12776859

S Y
P 33
S N
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B. Lender is the current owner and holder of a loan (“**Loan**”) in the original principal amount of \$2,300,000.00 made by Wells Fargo Bank, National Association (“**Original Lender**”) to Original Borrower pursuant to the terms of a Loan Agreement (the “**Loan Agreement**”) dated April 22, 2014, between Original Borrower and Original Lender, as evidenced and/or secured by the documents described in the Loan Agreement and on the attached **Exhibit B** (together with any and all other agreements, documents, instruments evidencing, securing or in any manner relating to the Loan, as all of the same may be amended, restated, supplemented or otherwise modified from time to time, shall collectively be referred to as the “**Loan Documents**”). The Loan is secured in part by the Property, which Property is described in and encumbered by the “**Security Instrument**” described on **Exhibit B**. Capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the Loan Agreement.

C. New Borrower desires to obtain Lender’s consent to the Requested Actions described below.

D. The Requested Actions, without Lender’s consent, are prohibited by the terms of the Loan Documents.

E. The Lender has agreed to consent to the following requested actions (collectively the “**Requested Actions**”): (i) Original Borrower selling the Property to New Borrower, (ii) New Borrower assuming all of Original Borrower’s obligations under the Loan Documents, (iii) New Borrower entering into a management agreement with WPD Management, LLC, an Illinois limited liability company (“**Property Manager**”), and (iv) the release of Original Borrower and Original Indemnitor from their respective obligations under the Loan Documents, on the terms set forth below.

In consideration of \$10.00 paid by each of the parties to the other, the mutual covenants set forth below, and other good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE I

ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

1.1 Original Borrower Representations. As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Original Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

(a) Incorporation of Recitals. All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by this reference.

(b) Authority of Original Borrower.

(i) Original Borrower. Original Borrower is a duly organized, validly existing limited liability company in good standing under the laws of the State of Illinois and is

qualified to transact business in the State of Illinois. Cedar Street Capital Partners LLC, a Delaware limited liability company ("**Original Borrower Manager**") is the managing member of Original Borrower. Original Borrower Manager, acting alone without the joinder of any other manager or member of Original Borrower or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind Original Borrower under this Agreement. The execution and delivery of, and performance under, this Agreement by Original Borrower have been duly and properly authorized pursuant to all requisite limited liability company action and will not (x) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Original Borrower or the articles of organization, certificate of formation, operating agreement, limited liability company agreement or any other organizational document of Original Borrower or (y) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Original Borrower is a party or by which the Property may be bound or affected.

(ii) Original Borrower Manager. Original Borrower Manager is a duly organized, validly existing limited liability company in good standing under the laws of the State of Delaware and is qualified to transact business in the State of Illinois. The execution and delivery of, and performance under, this Agreement by Original Borrower Manager have been duly and properly authorized pursuant to all requisite company action and will not (x) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Original Borrower Manager or the articles of organization, certificate of formation, operating agreement, limited liability company agreement or any other organizational document of Original Borrower Manager or (y) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Original Borrower Manager is a party or by which the Property may be bound or affected.

(c) Compliance with Laws. To Original Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Property as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Original Borrower has not received any written notice from any governmental entity claiming that Original Borrower or the Property is not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Property, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

(d) Rent Roll. The Rent Roll ("**Rent Roll**") attached as **Exhibit C** is a true, complete and accurate summary of all tenant leases ("**Leases**") affecting the Property as of the Effective Date.

(e) Leases. The Leases are the only leases affecting the Property and are currently in full force and effect. Original Borrower has not been notified of any landlord default under any of the Leases. There are no leasing broker's or finder's commissions of any kind due or to become due with respect to the Leases or the Property. The rents and security deposits under the Leases shown on the Rent Roll are true and correct. Original Borrower has not received any prepaid rents or given any concessions for free or reduced rent under the Leases and

will not accept any prepaid rents for more than one month in advance. Except as disclosed in the Rent Roll, all tenants at the Property are currently in possession of their leased premises.

(f) Title to Property and Legal Proceedings. Original Borrower is the current owner of fee title in the Property. There are no pending or threatened suits, judgments, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Original Borrower or the Property, or any pending or threatened condemnation proceedings or annexation proceedings affecting the Property, or any agreements to convey any portion of the Property, or any rights thereto to any person, entity, or government body or agency not disclosed in this Agreement.

(g) Loan Documents. The Loan Documents constitute valid and legally binding obligations of Original Borrower enforceable against Original Borrower and the Property in accordance with their terms. Original Borrower acknowledges and agrees that, nothing contained in this Agreement, or the Requested Actions, shall release or relieve Original Borrower from its obligations and liabilities under the Loan Documents arising prior to the Effective Date and not released in accordance with this Agreement. Original Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender, Wells Fargo Bank, National Association (“**Master Servicer**”), LNR Partners, LLC (“**LNR**”) and any and all other parties appointed and/or serving as servicers of the Loan together with Master Servicer and LNR (collectively, “**Servicer**”), all subsidiaries, parents and affiliates of Lender and Servicer and each of the foregoing parties’ predecessors in interest, and each and all of their respective past, present and future partners, members, certificateholders, officers, directors, employees, agents, contractors, representatives, participants and heirs and each and all of the successors and assigns of each of the foregoing (collectively, “**Lender Parties**”) or with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Property. To the extent Original Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the Effective Date, Original Borrower knowingly waives and relinquishes them.

(h) Bankruptcy. Original Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. (“**Bankruptcy Code**”), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation, dissolution or similar relief for debtors (“**Debtor Proceeding**”) under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or indirectly cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Original Borrower or any partners, members, managers, directors, officers or shareholders thereof or (iii) directly or indirectly cause the Property or any portion or any interest of Original Borrower in the Property to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

(i) No Default. To Original Borrower’s knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

(j) Immediate Repairs. Original Borrower has timely completed all Immediate Repairs as required by the Loan Agreement, has timely complied with the requirements of the Loan Agreement and has provided Original Lender or Lender with evidence of such completion and compliance.

(k) Lead Paint Disclosure. Original Borrower has no knowledge of any lead-based paint and/or lead-based paint hazards in the Improvements and, except as delivered to Lender in writing, Original Borrower has no reports or records pertaining to any lead-based paint and/or lead-based paint hazards in the Improvements.

(l) Reaffirmation. Original Borrower reaffirms and confirms the truth and accuracy of all representations and warranties in the Loan Documents, in all material respects, as if made on the Effective Date, provided Original Borrower shall not incur any liability whatsoever should any of the aforementioned representations or warranties become untrue or inaccurate after the Effective Date, other than as expressly agreed to herein.

1.2 Acknowledgments, Warranties and Representations of New Borrower. As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, New Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

(a) Incorporation of Recitals. All of the facts set forth in the Preliminary Statement of this Agreement are true and incorporated into this Agreement by reference.

(b) Authority of New Borrower.

(i) New Borrower. New Borrower is a duly organized, validly existing limited liability company in good standing under the laws of the State of Delaware and is qualified to transact business in the State of Illinois. SSDF2 Holdco 1, LLC, a Delaware limited liability company ("**New Borrower Member**") is the sole member of New Borrower. New Borrower Member, acting alone without the joinder of any other manager or member of New Borrower or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind New Borrower under this Agreement and the Loan Documents. The execution and delivery of, and performance under, this Agreement and the Loan Documents by New Borrower have been duly and properly authorized pursuant to all requisite company action and will not (x) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to New Borrower or the articles of organization, certificate of formation, operating agreement, limited liability company agreement, or any other organizational document of New Borrower or (y) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which New Borrower is a party or by which the Property may be bound or affected.

(ii) New Borrower Member. New Borrower Member is a duly organized, validly existing limited liability company in good standing under the laws of the State of Delaware and is qualified to transact business in the State of Illinois. Great Lakes

Development Corp LLC, a Delaware limited liability company (“**New Borrower Member’s Manager**”) is the sole manager of New Borrower Member. New Borrower Member’s Manager, acting alone without the joinder of any other manager or member of New Borrower Member or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind New Borrower Member and New Borrower under this Agreement and the Loan Documents. Jerome H. Cohen, as the sole managing member of New Borrower Member’s Manager, acting alone without the joinder of any other person, is authorized to execute this Agreement on behalf of New Borrower Member’s Manager. The execution and delivery of, and performance under, this Agreement by New Borrower Member have been duly and properly authorized pursuant to all requisite company action and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to New Borrower Member or the articles of organization, certificate of formation, limited liability company agreement, or the operating agreement of New Borrower Member or any other organizational document of New Borrower Member or (ii) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which New Borrower Member is a party or by which the Property may be bound or affected.

(c) Financial Statements. The financial statements and other information (“**Financial Statements**”) of Jerome H. Cohen, an individual (“**Principal**” or “**New Indemnitor**”), which have been previously delivered to Lender are true, complete and accurate in all material respects and accurately represent the financial condition of Principal as of the date thereof. All of the assets shown on Principal’s Financial Statements are owned by Principal, individually, as his sole and separate property, and not as community property or otherwise jointly with his spouse if married, unless such spouse is a guarantor hereunder and not otherwise jointly with any other person or entity. There has not been any material adverse change to the financial condition of Principal between the date of the Financial Statements and the Effective Date. New Borrower also acknowledges and agrees to cause Principal to timely comply with all financial, bookkeeping and reporting requirements set forth in the Loan Documents, including, without limitation, those set forth in Section 6.10 of the Loan Agreement. New Borrower acknowledges that the Financial Statements have been provided to Lender to induce Lender to enter into this Agreement and are being relied upon by Lender for such purposes. Since New Borrower is a single member limited liability company, to the extent that New Borrower Member files a tax return instead of New Borrower, that New Borrower will provide Lender with the tax returns for New Borrower Member instead of New Borrower. Similarly, to the extent that the balance sheets and financial statement of New Borrower are consolidated with those of New Borrower Member, that the consolidated balance sheets and financial statements will clearly identify the assets and liabilities of New Borrower as belonging to New Borrower and will provide Lender with copies of said consolidated balance sheets and financial statements.

(d) Bankruptcy Proceedings. None of New Borrower, New Borrower Member, New Borrower Member’s Manager or Principal (together with any other direct or indirect owners of 10% or more of New Borrower, collectively, the “**New Borrower Parties**”) or any other entities which may be owned or controlled directly or indirectly by any of New Borrower Parties (collectively, the “**Related Entities**”) has been a party to any Debtor Proceeding within ten (10) years prior to the date of the Effective Date.

(e) Defaults on Other Indebtedness. None of New Borrower Parties or any Related Entities has materially defaulted under its or their obligations with respect to any other indebtedness.

(f) New Borrower's Organizational Documents. New Borrower has not transacted any business in New Borrower's name since its formation. New Borrower is and will continue to be in full compliance with all of its organizational documents and the single purpose entity and separateness requirements of the Loan Documents and such organizational documents do not conflict with any of such single purpose entity and separateness requirements of the Loan Documents.

(g) Assets of New Borrower. The only assets of New Borrower are the Property, the personal property owned by New Borrower and used in connection with the Property and cash or cash equivalents.

(h) Management of Property. New Borrower is entering into a Property Management Agreement with Property Manager for the management of the Property (the "**New Management Agreement**"). The term "**Management Agreement**" or "**management agreement**" or such other similar term in the Loan Documents shall subsequently refer to the New Management Agreement. The term "**Property Manager**" or such other similar term in the Loan Documents shall subsequently refer to the Property Manager. New Borrower covenants and agrees to comply with and to cause the Property Manager to comply with all terms and conditions of the Loan Documents concerning the management of the Property, including without limitation the obligation to obtain Lender's consent to the management of the Property by any entity other than Property Manager. Property Manager shall execute and deliver to Lender a subordination of the New Management Agreement in form acceptable to Lender.

(i) Loans to Related Entities. There are no loans payable by New Borrower to any of the Related Entities or any other entities or persons.

(j) New Borrower Parties' Interests. None of New Borrower Parties or any of the Related Entities is obtaining a loan to finance its direct or indirect interest in New Borrower or the Property or pledging its direct or indirect interest in New Borrower to any party, and none of the entities or individuals owning a direct or indirect interest in New Borrower has any right to take over control from any of such other entities or individuals.

(k) Loan Documents. The Loan Documents, from and after the Effective Date, are valid and legally binding obligations of New Borrower, enforceable against New Borrower and the Property in accordance with their terms. This Agreement and the execution of other contemplated documents do not constitute the creation of a new debt or the extinguishment of the debt evidenced by the Loan Documents, and they shall not in any way affect or impair the liens and security interests created by the Loan Documents, which New Borrower acknowledges to be valid and existing liens and security interests in the Property. New Borrower agrees that the lien and security interests created by the Loan Documents continue to be in full force and effect, unaffected and unimpaired by this Agreement or by the transfer of the Property or any collateral described in financing statements filed in connection with the Loan Documents and

that said liens and security interests shall so continue in their perfection and priority until the debt secured by the Loan Documents is fully discharged. New Borrower has no defenses, affirmative defenses, setoffs, claims, counterclaims, crossclaims or causes of action of any kind or nature whatsoever against the Lender Parties with respect to (i) the Loan, (ii) the indebtedness due under the Loan Documents (the “**Indebtedness**”), (iii) the Loan Documents, or (iv) the Property. To the extent New Borrower would be deemed to have any such defenses, affirmative defenses, setoffs, claims, counterclaims, crossclaims or causes of action as of the Effective Date, New Borrower knowingly waives and relinquishes them. New Borrower acknowledges that it has received copies of all of the Loan Documents.

(l) No Default. To New Borrower’s knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

(m) Inspections. New Borrower has not obtained any written third-party inspection reports relating to the Property.

(n) Reaffirmation. To New Borrower’s actual knowledge, New Borrower affirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the Effective Date.

ARTICLE 2

ACKNOWLEDGMENTS AND COVENANTS OF BORROWER PARTIES

As a material inducement to Lender to enter into this Agreement and to consent to Requested Actions each of Borrower Parties, as to itself only, acknowledges, warrants, represents, covenants and agrees to and with Lender as follows:

2.1 Assumption of Loan. New Borrower hereby assumes the indebtedness due under the Note, the Loan and all of Original Borrower’s other obligations, as grantor, mortgagor, borrower, assignor, trustor, indemnitor, guarantor, or maker, as the case may be, under the Loan Documents to the same extent as if New Borrower had signed such instruments. New Borrower agrees to comply with and be bound by all the terms, covenants and agreements, conditions and provisions set forth in the Loan Documents.

2.2 Indebtedness. As of November 13, 2017, the outstanding principal balance of the Loan was \$2,221,705.50 and the following escrow and reserve balances (collectively, “**Escrow Balances**”) are being held by Lender: (i) a tax escrow balance of \$5,195.04 (ii) an insurance escrow balance of \$12,454.60; and (iii) a replacement reserve escrow balance of \$12,910.00. Further, Borrower Parties acknowledge and agree that Lender will continue to hold the Escrow Balances for the benefit of New Borrower in accordance with the terms of the Loan Documents. In the event of any error in, or omission from, the foregoing, Lender shall not be prejudiced, limited, or estopped, in any way in its right to charge, collect and receive any and all monies lawfully due Lender under the Loan Documents. Lender represents and warrants to New

Borrower that to Lender's actual knowledge (i) the amounts set forth above are correct, (ii) Lender has not issued any written notices of default to Original Borrower which have not been cured, and (iii) there are no existing material defaults under the Loan Documents.

2.3 Assumption and Other Fees. Simultaneously with or prior to the Effective Date, any or both of Borrower Parties shall pay to or has paid Lender: (a) a processing fee of \$5,000.00; (b) an assumption fee equal to \$22,217.06, which is one percent (1%) of the outstanding principal balance of the Loan; and (c) such other costs, fees, and expenses as shown in the closing statement executed by Borrower Parties in connection in with the closing of this transaction. Each of the Borrower Parties agrees that the foregoing fees are for new consideration and are not interest charged in connection with the Loan.

2.4 Payment of Transaction Costs and Expenses. Any or both of Borrower Parties shall pay at the time of execution of this Agreement by Lender: (a) the legal fees and disbursements of Lender's counsel, Kilpatrick Townsend & Stockton LLP, in connection with the preparation of this Agreement and the transactions contemplated in this Agreement; (b) all recording costs and documentary stamps, or other taxes if any, due upon the recording of this Agreement; and (c) the costs of updating Lender's policy of title insurance insuring the Security Instrument to a current date and endorsing such policy to include this Agreement in the description of the Security Instrument with no additional exceptions, or, at Lender's option, the cost of obtaining a new Lender's policy of title acceptable to Lender insuring the Loan Documents as affected by this Agreement.

2.5 Information.

(a) New Borrower and New Indemnitor (as such term is defined in the Joinder By and Agreement of New Indemnitor attached to this Agreement (the "**New Indemnitor Joinder**")), confirm that all information provided to Lender and/or any Servicer by or on behalf of New Borrower and/or New Indemnitor or any of their respective employees, officers, directors, partners, members, managers or representatives, in connection with or relating to (i) the Requested Actions, (ii) this Agreement or the contemplated transactions or (iii) the Property, contains no untrue statement of material fact and does not omit a material fact necessary in order to make such information not materially misleading, and the provision of any such information by Lender or any Servicer to any rating agency is expressly consented to by New Borrower and New Indemnitor and will not infringe upon or violate any intellectual property rights of any party (collectively, the "**NB Disclosure Representations**"). New Borrower and New Indemnitor, jointly and severally, agree to reimburse, indemnify and hold Lender Parties harmless from and against any and all liabilities, judgments, costs, claims, damages, penalties, expenses, losses or charges (including, but not limited to, all reasonable legal fees and court costs) (collectively, "**Indemnification Costs**"), which may now or in the future be undertaken, suffered, paid, awarded, assessed or otherwise incurred as a result of or arising out of any breach or inaccuracy of the NB Disclosure Representations or any fraudulent or tortious conduct of New Borrower and/or New Indemnitor in connection with the Requested Actions, this Agreement or the contemplated transactions, or the Property, including any misrepresentation of financial data presented to Lender and/or Servicer.

(b) Original Borrower and Original Indemnitor (as such term is defined in the Joinder By and Agreement of Original Indemnitor attached to this Agreement (the “**Original Indemnitor Joinder**”)), confirm that all information provided to Lender and/or any Servicer by or on behalf of Original Borrower and/or Original Indemnitor or any of their respective employees, officers, directors, partners, members, managers or representatives, in connection with or relating to (i) the Requested Actions, (ii) this Agreement or the contemplated transactions or (iii) the Property, contains no untrue statement of material fact and does not omit a material fact necessary in order to make such information not misleading, and the provision of any such information by Lender and/or any Servicer to any rating agency is expressly consented to by Original Borrower and Original Indemnitor and will not infringe upon or violate any intellectual property rights of any party (collectively, the “**OB Disclosure Representations**”). Original Borrower and Original Indemnitor, jointly and severally, agree to reimburse, indemnify and hold Lender Parties harmless from and against any and all Indemnification Costs, which may now or in the future be undertaken, suffered, paid, awarded, assessed or otherwise incurred as a result of or arising out of any material breach or inaccuracy of the OB Disclosure Representations or any fraudulent or tortious conduct of Original Borrower and/or Original Indemnitor in connection with the Requested Actions, this Agreement or the contemplated transactions, or the Property, including any misrepresentation of financial data presented to Lender and/or Servicer.

2.6 Release and Covenant Not To Sue. Each of Borrower Parties, as to itself and all of its heirs, successors and assigns only, remises, releases, acquits, satisfies and forever discharges Lender Parties from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, inactions, claims, demands and causes of action of any nature whatsoever, whether at law or in equity, whether known or unknown, either now accrued or subsequently maturing, which any of Borrower Parties now has or subsequently may have by reason of any matter, cause or thing, from the beginning of the world to and including the Effective Date, including, without limitation, matters arising out of or relating to (a) the Loan, (b) the Loan Documents, (c) the Indebtedness, (d) the Property, and (e) any other agreement or transaction between Borrower Parties or any one of them and any of Lender Parties concerning matters arising out of or relating to the items set forth in subsections (a) – (d) above. Each of Borrower Parties, as to itself and all of its respective heirs, successors and assigns only, covenants and agrees never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any of Lender Parties by reason of or in connection with any of the foregoing matters, claims or causes of action; provided, however, Borrower Parties do not waive the right to assert an affirmative defense in response to a claim made by Lender against Borrower Parties after the Effective Date concerning matters arising out of or relating to the items set forth in subsections (a) – (d) above.

2.7 Further Assurances. Borrower Parties shall execute and deliver to Lender such agreements, instruments, documents, financing statements and other writings as may be requested from time to time by Lender to perfect and to maintain the perfection of Lender’s security interest in and to the Property, and to consummate the transactions contemplated by or in the Loan Documents and this Agreement.

ARTICLE 3

ADDITIONAL PROVISIONS

3.1 Modifications to Loan Documents. The Loan Documents are modified as set forth on **Schedule 3.1** attached hereto.

3.2 Consent of Lender. Subject to the terms of this Agreement, Lender consents to the Requested Actions. Each of Borrower Parties, Original Indemnitor and New Indemnitor agrees that neither this Agreement nor Lender's consent to the Requested Actions shall be deemed Lender's consent or a waiver of Lender's right to consent to any other action requiring Lender consent under the Loan Documents that may be contained in any of the documents or items delivered to Lender in connection with the Requested Actions, whether or not such documents or items were reviewed and/or accepted by Lender, including but not limited to any action permitted under the Limited Liability Company Operating Agreement of New Borrower (the "**LLC Agreement**"). Without limiting the foregoing, New Borrower acknowledges and agrees that notwithstanding the provisions of Section 5.17 of the LLC Agreement, New Borrower is required to obtain, and shall obtain, Lender's prior written consent to any removal of New Borrower Member in accordance with the terms of the Loan Documents. Moreover, neither this Agreement nor Lender's consent to the Requested Actions shall constitute a modification of any of the terms or conditions of the Loan Documents, except as expressly provided for in this Agreement.

3.3 Release of Original Indemnitor and Original Borrower. Lender releases (i) Original Indemnitor from its obligations under the Guaranty and the Environmental Indemnity (as such terms are defined in the attached **Exhibit B**) in accordance with and subject to the terms of the Original Indemnitor Joinder, and (ii) Original Borrower for any acts or events occurring or obligations arising under the Loan Documents after the Effective Date with the exception of any liability of Original Borrower based upon (a) any material misrepresentation of Original Borrower in this Agreement or any other document executed in connection with this Agreement and/or (b) the obligations under the Environmental Indemnity (the "**Environmental Indemnity Obligations**") or any of the other Loan Documents that are caused by Original Borrower or any of its agents or result from the existence of conditions existing prior to the Effective Date or migrating to or from any portion of the Property prior to the Effective Date, or result from a violation of Environmental Law (as defined in the Environmental Indemnity) prior to the Effective Date. Original Borrower shall bear the burden of proving when Hazardous Substances (as defined in the Environmental Indemnity) first existed upon, about or beneath the Property or began migrating to or from the Property and when a violation of Environmental Law first occurred. The foregoing burden of proof is for the benefit of the Lender, its successors and assigns, and is not for the benefit of any other party.

3.4 UCC Filings. New Borrower hereby grants and confirms unto Lender a first lien priority security interest in all of New Borrower's assets, including but not limited to all of its (i) personal property and all of the fixtures located at the Property and (ii) the Property (as such term is defined in the Security Instrument) to the maximum extent permitted by the Uniform Commercial Code ("**UCC**"). Borrower Parties hereby consent to the filing of any financing

statements or UCC forms required to be filed in the applicable states or any other applicable filing office, including, but not necessarily limited to, the state of organization of New Borrower and in the Records (collectively “**Filings**”) in order to perfect or continue the perfection of said interest and, notwithstanding anything contained in any of the Loan Documents to the contrary, in accordance with the UCC, as amended subsequent to the making of the Loan, said Filings may be made by Lender without the consent of either of the Borrower Parties. Upon New Borrower’s assumption of the Loan, Lender shall deliver to Original Borrower a UCC financing statement termination to be filed with the Illinois Secretary of State with respect to that certain financing statement filed under Filing No. 019204154 with the Illinois Secretary of State.

3.5 References to Loan Documents. All references to the term “Loan Documents” in the Loan Agreement, Security Instrument, Guaranty, Environmental Indemnity, and the other Loan Documents are modified to include this Agreement and all documents executed and/or required in connection with the Requested Actions. All references to the term “Loan Agreement”, “Guaranty” and “Environmental Indemnity” in the Loan Agreement, the Security Instrument, and the other Loan Documents shall mean and refer to the Loan Agreement, Guaranty and Environmental Indemnity as modified by the terms of this Agreement and/or the New Indemnitor Joinder attached hereto.

ARTICLE 4

INTENTIONALLY DELETED

ARTICLE 5

MISCELLANEOUS PROVISIONS

5.1 No Limitation of Remedies. No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

5.2 No Waivers. Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender or Borrower Parties under the Loan Documents or at law. No delay or failure on the part of any party in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions. Any party may in writing expressly waive any of such party’s rights under this Agreement without invalidating this Agreement.

5.3 Successors or Assigns. Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns

of such party shall be deemed included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

5.4 Construction of Agreement. Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower Parties at all times have had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower Parties, pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties, if any, are totally superseded and merged into this Agreement, which represents the final and sole agreement of the parties with respect to the subject matters. All of the terms of this Agreement were negotiated at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement are the free and voluntary act of Borrower Parties.

5.5 Invalid Provision to Affect No Others. If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained in this Agreement, and the remainder of this Agreement shall remain operative and in full force and effect.

5.6 Notices. Notwithstanding anything to the contrary contained in any of the Loan Documents, any and all notices, elections, approvals, consents, demands, requests and responses ("Communications") permitted or required to be given under this Agreement or the Loan Documents shall not be effective unless in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or a nationally recognized overnight courier service (such as FedEx), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section. Any Communications shall be effective upon the earlier of their receipt or three days after mailing in the manner indicated in this Section. Receipt of Communications shall occur upon actual delivery but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Any Communication, if given to Lender, must be addressed as follows, subject to change as provided above:

Wilmington Trust, National Association, as
Trustee for the registered holders of Wells
Fargo Commercial Mortgage Trust 2014-
LC16, Commercial Mortgage Pass-Through
Certificates, Series 2014-LC16
Wells Fargo Bank, N.A.
Wells Fargo Commercial Mortgage Servicing
Three Wells Fargo
401 S. Tryon Street, 8th Floor
MAC D1050-084
Charlotte, NC 28202
Re: Drexel Apartments, Loan No. M860923146

With a copy to:

LNR Partners, LLC
1601 Washington Avenue, Suite 700
Miami Beach, Florida 33139
Attn: Director of Loan Asset Management
Re: Drexel Apartments Loan No. M860923146

and, if given to Original Borrower, must be addressed as follows, notwithstanding any other
address set forth in the Loan Documents to the contrary, subject to change as provided above:

Ohio Commons LLC
1025 W. Sunnyside Avenue, Suite 300
Chicago, Illinois 60640
Attn: Alex Samoylovich
Facsimile: (312) 506-3278

With a copy to:

Brotshul Potts LLC
30 N. LaSalle Street, Suite 1402
Chicago, Illinois 60602
Attn: Chris Cirillo, Esq.
Facsimile: (312) 277-3278

and, if given to New Borrower, must be addressed as follows, subject to change as provided above:

5001 S. Drexel LLC
 201 N. Westshore, Unit 1501
 Chicago, Illinois 60601
 Attn: Jerome H. Cohen
 Facsimile: (202) 204-8423

With a copy to:

Rock Fusco & Connelly, LLC
 321 N. Clark Street, Suite 2200
 Chicago, Illinois 60654
 Attn: Ioana Salajanu
 Facsimile: (312) 377-5750

5.7 Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the provisions of Section 16.2 of the Loan Agreement.

5.8 Headings; Exhibits. The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

5.9 Modifications. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

5.10 Time of Essence; Consents. Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

5.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

5.12 New Indemnitor Joinder. New Indemnitor shall assume the obligations of Original Borrower and Original Indemnitor under the Guaranty and the Environmental Indemnity pursuant to the New Indemnitor Joinder.

5.13 WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ORIGINAL BORROWER, NEW BORROWER AND LENDER, BY ACCEPTANCE OF THIS AGREEMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ORIGINAL BORROWER OR NEW BORROWER.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

The parties have executed and delivered this Agreement as of the day and year first above written.

ORIGINAL BORROWER:

OHIO COMMONS LLC, an Illinois limited liability company

Witnesses:

By: Cedar Street Partners LLC, a Delaware limited liability company, its Managing Member

Kristina Bianchi
Print Name: Kristina Bianchi

John Hoy
Print Name: John Hoy

By: Alex Samoylovich
Name: Alex Samoylovich
Title: Authorized Signatory

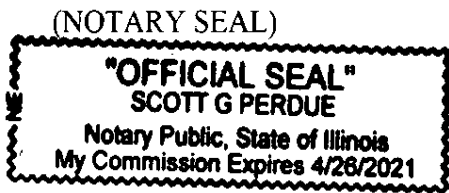
STATE OF ILLINOIS)
) : ss.
COUNTY OF Cook)

This instrument was acknowledged before me on the 25 day of September, 2017, by Alex Samoylovich, the Manager of Cedar Street Partners LLC, a Delaware limited liability company, the Managing Member of OHIO COMMONS LLC, an Illinois limited liability company.

My Commission Expires:

4/26/2021

Scott G. Perdue
Notary Public, State of Illinois
Notary's Name: Scott G. Perdue
(printed)



SIGNATURE PAGE

SCHEDULE 3.1

MODIFICATIONS TO LOAN DOCUMENTS

I. Loan Agreement

- a. As of the Effective Date, the sum of "\$687.50" in Section 4.2 as the Replacement Reserve Monthly Deposit is deleted and replaced with "\$843.56". On the Effective Date, New Borrower shall deposit into the Replacement Reserve Account an additional \$561,279.00, which shall constitute Replacement Reserve Funds.
- b. As of the Effective Date and for so long as 5001 S. Drexel LLC is the Borrower of the Loan, Section 8.2 is deleted in its entirety and replaced with the following:

"Section 8.2 Equity Transfers.

(a) Notwithstanding the restrictions contained in this Article 8 but subject to those contained in Section 8.2(b) below, the following equity transfers (but not the pledge) in the aggregate to any Person individually of less than nineteen percent (19%) of the beneficial economic interests in Borrower (directly or indirectly) (each a "Permitted Equity Transfer") shall be permitted without Lender's consent; provided, however, each such Permitted Equity Transfer shall be conditioned upon Borrower's ability to, after giving effect to the applicable Permitted Equity Transfer, remake the representations contained herein relating to ERISA, OFAC and Patriot Act matters and, as a condition thereof Borrower shall deliver to Lender not less than ten (10) Business Days prior to the consummation thereof (x) an Officer's Certificate containing such updated representations and a representation that the transferee is an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, effective as of the date of such certificate and as of the date of consummation of the applicable Permitted Equity Transfer, and shall provide a breakdown of the purchase/sale price of the ownership interest(s) being transferred and any and all fees received by Jerome H. Cohen and any affiliated Person, and (y) searches, acceptable to Lender, for any Person owning, directly or indirectly, 10% or more of the interests in Borrower as a result of such Permitted Equity Transfer: (i) non-managing member interests in Borrower or in any member of Borrower shall be freely transferable without Lender's prior written consent so long as following such transfer, no more than 49% of the beneficial economic interest in Borrower (whether directly or indirectly) has been transferred in the aggregate and there is no change in Control of Borrower, Guarantor or any Affiliated Manager or any change in control of the day-to-day operations of the Property, (ii) any involuntary transfer caused by the death of Borrower or any general partner, shareholder, joint venturer, member or beneficial owner of a trust so long as Borrower is promptly reconstituted, if required, following such death and so long as there is no change in Control of Borrower, Guarantor or any Affiliated

Schedule 3.1

Manager or any change in control of the day-to-day operations of the Property unless any replacement management and/or controlling parties are approved by Lender and (iii) subject to Section 8.2(b) below, gifts for estate planning purposes of any individual's interests in Borrower or any general partner, shareholder, joint venturer or member to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant so long as Borrower is reconstituted, if required, following such gift and so long as there is no change in Control of Borrower, Guarantor, or any Affiliated Manager or any change in control of the day-to-day operations of the Property unless any replacement management and/or controlling parties are approved by Lender.

(b) Lender's prior written consent, given or withheld in its sole discretion, shall be required for (i) any equity transfer in which 20% or more of the beneficial economic interest in Borrower (whether directly or indirectly) is to be transferred and (ii) any equity transfer which results in a Person owning 20% or more of the beneficial economic interest in Borrower (whether directly or indirectly) who prior to such equity transfer did not own at least 20% of the beneficial economic interest in Borrower (whether directly or indirectly).

(c) Jerome H. Cohen shall, directly or indirectly, retain at least a twenty percent (20%) ownership interest in Borrower at all times and an equivalent capital contribution."

c. Exhibit A:

- i. As of the Effective Date, in the definition of "**Guarantor**", the names "Alex Samoylovich, an individual, and Jay Michael, an individual" are deleted and replaced with "Jerome H. Cohen, an individual".
- ii. As of the Effective Date, in the definition of "**Manager**", "Flats, LLC, an Illinois limited liability company" is deleted and replaced with "WPD Management, LLC, an Illinois limited liability company".

2. Security Instrument

- a. Section 15.9 is revised as of the Effective Date as follows:

Name of Debtor:	5001 S. Drexel LLC
Debtor's Mailing Address:	201 N. Westshore, Unit 1501 Chicago, IL 60601 Attn: Jerome H. Cohen

Name of Secured Party: Wilmington Trust, National Association, as Trustee for the registered holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16

Address of Secured Party: c/o Wells Fargo Bank, N.A.
Wells Fargo Commercial Mortgage Servicing
Three Wells Fargo
401 S. Tryon Street, 8th Floor
MAC D1050-084
Charlotte, NC 28202

EXHIBIT A

LEGAL DESCRIPTION

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 TO 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Street Address: 5001 S. Drexel Blvd, Chicago, IL 60615

Parcel ID: 20-11-114-001-0000

Exhibit A

Drexel Apartments
Assumption Agreement
12776859

EXHIBIT B**LOAN DOCUMENTS**

(All documents are dated as of **April 22, 2014**, unless otherwise indicated, as assigned to Lender)

1. Promissory Note, in the principal amount of \$2,300,000.00, executed by Original Borrower and payable to the order of Original Lender, endorsed to the order of Lender (the "**Note**").
2. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Original Borrower to Original Lender and recorded as Document No. 1411318041 with the Recorder of Deeds of Cook County, Illinois (the "**Records**") (the "**Security Instrument**").
3. Assignment of Leases and Rents executed by Original Borrower to Original Lender and recorded as Document No. 1411318042 in the Records.
4. Loan Agreement between Original Borrower and Original Lender (the "**Loan Agreement**").
5. Environmental Indemnity Agreement executed by Original Borrower, Alex Samoylovich and Jay Michael in favor of Original Lender (the "**Environmental Indemnity**").
6. Guaranty of Recourse Obligations executed by Alex Samoylovich and Jay Michael for the benefit of Original Lender (the "**Guaranty**").
7. Conditional Assignment of Management Agreement executed by Original Borrower for the benefit of Original Lender, acknowledged by Flats, LLC.
8. UCC-1 Financing Statement No. 19204154, as assigned, showing Original Borrower as Debtor and Lender as Secured Party, filed with the Secretary of State of Illinois.

Exhibit B

EXHIBIT C

RENT ROLL

(INTENTIONALLY DELETED FOR PURPOSES OF RECORDING)

JOINDER BY AND AGREEMENT OF ORIGINAL INDEMNITOR

The undersigned, ALEX SAMOYLOVICH, an individual, and THE ESTATE OF JAY MICHAEL (individually and collectively, "**Original Indemnitor**") being the guarantor/indemnitor under the Guaranty and the Environmental Indemnity executed in connection with the Loan described in the Assumption Agreement ("**Agreement**") to which this Joinder by and Agreement of Original Indemnitor ("**Original Indemnitor Joinder**") is attached, represents and warrants to, and acknowledges and agrees with, Lender the following:

1. **Defined Terms.** All capitalized terms used in this Original Indemnitor Joinder, unless defined below, shall have the meanings given such terms in the Agreement.
2. **Reaffirmation of Guaranty and Environmental Indemnity.** The Guaranty and the Environmental Indemnity constitute the valid, legally binding joint and several obligation of Original Indemnitor, enforceable against Original Indemnitor in accordance with their respective terms. Original Indemnitor waives and releases any and all defenses, affirmative defenses, setoffs, claims, counterclaims and causes of action of any kind or nature which Original Indemnitor has asserted, or might assert, against any of Lender Parties which in any way relate to or arise out of the Guaranty, the Environmental Indemnity, or any of the other Loan Documents.
3. **Agreements of Original Indemnitor.** Original Indemnitor consents to the execution and delivery of the Agreement by Original Borrower and New Borrower and agrees and acknowledges that, except as set forth in paragraphs 5 and 6 below, the liability of Original Indemnitor under the Guaranty and the Environmental Indemnity shall not be diminished in any way by the execution and delivery of the Agreement or by the consummation of any of the transactions contemplated therein, including but not limited to the Requested Actions.
4. **Authority Representations by the Original Indemnitor.** The execution and delivery of, and performance under, this Original Indemnitor Joinder, the Guaranty and the Environmental Indemnity by Original Indemnitor will not (a) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Original Indemnitor or (b) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Original Indemnitor is a party or by which the Property may be bound or affected. It is acknowledged and agreed that Mark Michael, solely in his capacity as Independent Executor of The Estate of Jay Michael (the "**Estate**") and not personally, has caused the Estate to join in the execution and delivery of this Original Indemnitor Joinder and Mark Michael shall not be held personally liable hereunder.
5. **Release of Original Indemnitor under Guaranty.** Notwithstanding anything to the contrary in this Original Indemnitor Joinder, the Loan Agreement, if applicable, the Security Instrument, or the other Loan Documents, each Original Indemnitor's obligations under this Original Indemnitor Joinder and the Guaranty shall not apply with respect to, and by acceptance of this Original Indemnitor Joinder, Lender agrees that Original Indemnitor is hereby released from any and all of Original Indemnitor's obligations (the "**Guaranteed Obligations**") under the Guaranty for acts or events occurring or obligations arising after the Effective Date except for: (a) any material misrepresentation of Original Indemnitor in this Original Indemnitor Joinder or

any other document executed in connection herewith, and/or (b) Guaranteed Obligations that are caused by Original Borrower and/or Original Indemnitor and/or any of their agents.

6. **Release of Original Indemnitor Under Environmental Indemnity.**

Notwithstanding anything to the contrary in this Original Indemnitor Joinder, the Loan Agreement, if applicable, the Security Instrument or the Loan Documents, Original Indemnitor's obligations under this Original Indemnitor Joinder and under the Environmental Indemnity shall not apply with respect to, and by acceptance of this Original Indemnitor Joinder, Lender agrees that Original Indemnitor is released for all acts or events occurring or obligations arising under the Environmental Indemnity ("**Environmental Indemnity Obligations**") after the Effective Date unless such Environmental Indemnity Obligations: (a) are caused by Original Borrower, Original Indemnitor and/or any of their agents, or (b) result from the existence of conditions existing prior to the Effective Date or migrating to or from any portion of the Property prior to the Effective Date, or result from a violation of Environmental Law prior to the Effective Date. For purposes of this Original Indemnitor Joinder, Original Indemnitor shall bear the burden of proving when Hazardous Substances first existed upon, about or beneath the Property or began migrating to or from the Property and when a violation of Environmental Law first occurred; provided however, the foregoing burden of proof is for the benefit of Lender, its successors and assigns, and is not for the benefit of any third party.

7. **Confirmation of Representations; Additional Representations.** Unless previously disclosed in writing to Lender, Original Indemnitor confirms as of the Effective Date (a) the representations and warranties and agrees to the covenants regarding Original Indemnitor set forth in the Agreement, including, but not limited to the obligations to pay the Indemnification Costs due to a material misrepresentation of Original Borrower or Original Indemnitor, and (b) the truth and accuracy of all representations and warranties set forth in the Guaranty and Environmental Indemnity, as applicable. Original Indemnitor represents and warrants that it delivered true and complete copies of the Guaranty and the Environmental Indemnity to New Indemnitor and warranted to New Indemnitor that such documents were true and complete copies of such documents as signed by Original Indemnitor.

8. **Governing Law.** This Original Indemnitor Joinder shall be interpreted, construed, and enforced in accordance with the governing law provisions of the Guaranty and Environmental Indemnity, as applicable.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

The undersigned Original Indemnitor has executed and delivered this Original Indemnitor Joinder to be effective as of the Effective Date of the Agreement.

ORIGINAL INDEMNITOR:

Witnesses:

Kristina Bianchi
Print Name: Kristina Bianchi

[Signature]
ALEX SAMOYLOVICH, an individual

[Signature]
Print Name: John Hoy

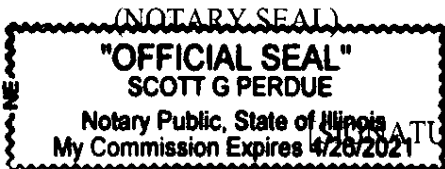
STATE OF ILLINOIS)
)
) : ss.
COUNTY OF Cook)

This instrument was acknowledged before me on the 25 day of September, 2017, by Alex Samoylovich.

My Commission Expires:

9/26/2021

Scott G. Perdue
Notary Public, State of Illinois
Notary's Name: Scott G. Perdue
(printed)



SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signature Page

[SIGNATURES CONTINUED FROM PROCEEDING PAGE]

ORIGINAL INDEMNITOR:

THE ESTATE OF JAY MICHAEL

Witnesses:

Kristina Bianchi
Print Name: Kristina Bianchi

John Hoy
Print Name: John Hoy

By: Mark Michael
Mark Michael, solely in his capacity
as Independent Executor of The Estate of
Jay Michael and not personally

STATE OF ILLINOIS)
: ss.
COUNTY OF _____)

This instrument was acknowledged before me on the 16 day of November, 2017,
by Mark Michael, as Independent Executor of The Estate of Jay Michael.

My Commission Expires:

March 03, 2021

(NOTARY SEAL)

Erika Sancen
Notary Public, State of Illinois
Notary's Name: Erika Sancen
(printed)



JOINDER BY AND AGREEMENT OF NEW INDEMNITOR

The undersigned, JEROME H. COHEN, an individual (“**New Indemnitor**”), being the Principal referred to in the Assumption Agreement (the “**Agreement**”) to which this Joinder by and Agreement of New Indemnitor (the “**New Indemnitor Joinder**”) is attached, intending to be legally bound under the terms and provisions of the Guaranty and the Environmental Indemnity pursuant to the provisions of this New Indemnitor Joinder, hereby represents and warrants to and acknowledges and agrees with Lender the following:

1. **Defined Terms.** All capitalized terms used in this New Indemnitor Joinder, unless defined below, shall have the meanings given such terms in the Agreement, and if not defined below, then in the Original Indemnitor Joinder attached thereto.

2. **Benefit to New Indemnitor.** New Indemnitor, owning a direct and/or indirect interest in New Borrower as a result of the Requested Actions, shall receive a substantial benefit from Lender’s consent to the Requested Actions.

3. **Assumption by New Indemnitor of Guaranty.** From and after the Effective Date, New Indemnitor hereby assumes and agrees to be liable and responsible for and bound by all of Original Indemnitor’s obligations, agreements and liabilities, including but not limited to the jury waiver and other waivers set forth therein, under the Guaranty, as amended by this New Indemnitor Joinder, as fully and completely as if the New Indemnitor had originally executed and delivered such Guaranty, as amended by this New Indemnitor Joinder, as the guarantor thereunder. New Indemnitor further agrees to pay, perform and discharge each and every obligation of payment and performance of any guarantor under, pursuant to and as set forth in the Guaranty, as amended by this New Indemnitor Joinder, at the time, in the manner and otherwise in all respects as therein provided. From and after the Effective Date hereof, the Guaranty is amended to provide that all references to the term “**Borrower**” used in the Guaranty shall mean and refer to the New Borrower and the term “**Guarantor**” used in the Guaranty shall mean and refer to the New Indemnitor.

4. **Assumption by New Indemnitor of Environmental Indemnity.** New Indemnitor by this New Indemnitor Joinder assumes and agrees to be liable and responsible for and bound by all of the Original Indemnitor’s obligations, agreements and liabilities, including but not limited to the jury waiver and other waivers set forth therein, under the Environmental Indemnity as fully and completely as if New Indemnitor had signed such Environmental Indemnity, as amended by this New Indemnitor Joinder, as the indemnitor/guarantor thereunder, including without limitation, all of those obligations, agreements and liabilities which would have been the obligations, agreements and liabilities of Original Indemnitor, without regard to when such obligations, agreements and liabilities arise, accrue or have arisen or accrued and without regard to the Original Indemnitor’s responsibility therefore, if any. New Indemnitor further agrees to pay, perform, and discharge each and every obligation of payment and performance of any guarantor/indemnitor under, pursuant to and as set forth in the Environmental Indemnity, as amended by this New Indemnitor Joinder, at the time, in the manner and otherwise in all respects as therein provided. The liability of New Indemnitor under this paragraph shall be joint and several with that of New Borrower and, if applicable, Original Indemnitor. From and after the Effective Date, the Environmental Indemnity is

amended to provide that all references to the term “**Borrower**” used in the Environmental Indemnity shall mean and refer to the New Borrower and the term “**Indemnitor**” used in the Environmental Indemnity shall mean and refer to the New Indemnitor.

5. **Confirmation of Representations; Additional Representations.** New Indemnitor confirms (a) the representations and warranties and agrees to the covenants regarding New Indemnitor set forth in the Agreement, including, but not limited to obligations to pay the Indemnifications Costs and (b) the truth and accuracy of all representations and warranties set forth in the Guaranty and Environmental Indemnity, as applicable. New Indemnitor represents and warrants that New Indemnitor received copies of the Guaranty and the Environmental Indemnity from Original Indemnitor, which copies were warranted by Original Indemnitor as being true and complete copies of such documents.

6. **Authority Representations by New Indemnitor.** The execution and delivery of this New Indemnitor Joinder, and performance by New Indemnitor under the New Indemnitor Joinder, the Guaranty and Environmental Indemnity will not (a) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to New Indemnitor or (b) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which New Indemnitor is a party or by which the Property may be bound or affected.

7. **Notices to New Indemnitor.** Lender shall deliver any notices to New Indemnitor which are required to be delivered pursuant to the Guaranty and the Environmental Indemnity, or are otherwise delivered by the Lender thereunder at Lender’s sole discretion, to the New Indemnitor at the following address:

Jerome H. Cohen
c/o Equity Build Inc.
1050 8th Avenue N
Naples, Florida 34102
Facsimile: (202) 204-8423

All notices to be sent by New Indemnitor to Lender under the Guaranty, the Environmental Indemnity and Loan Documents shall be sent to Lender in the manner set forth in and at the address shown in Section 5.6 of the Agreement.

8. **Joint and Several Liability.** If New Indemnitor consists of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several.

9. **Governing Law.** This New Indemnitor Joinder shall be interpreted, construed, and enforced in accordance with the governing law provisions of the Guaranty and Environmental Indemnity, as applicable.

The undersigned New Indemnitor has executed and delivered this New Indemnitor Joinder to be effective as of the Effective Date of the Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**

NEW INDEMNITOR:

Witnesses:

Jessica Baier
Print Name: Jessica Baier

[Signature]
JEROME H. COHEN, an individual

Sandy Sullivan
Print Name: Sandy Sullivan

STATE OF FLORIDA)
) SS:
COUNTY OF Manatee)

The foregoing instrument was acknowledged before me this 14 day of November, 2017, by Jerome H. Cohen. He is personally known to me or has produced a driver's license as identification.



Jessica Baier
Notary Public, State of Florida
Print Name: Jessica Baier
My Commission Expires: 8/17/21

[AFFIX NOTARY STAMP ABOVE]

EXHIBIT D

Loan No: 86-0923146

LOAN AGREEMENT

Dated as of April 22, 2014

Between

OHIO COMMONS LLC,
as Borrower,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Lender

Property: Ohio Commons, with a common address at 5001-5005 South Drexel Boulevard/909-919 East
50th Street, Chicago, Illinois 60615.

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of April 22, 2014, (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement**"), between **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, having an address at 1901 Harrison Street, 2nd Floor, MAC A0227-020, Oakland, California 94612 (together with its successors and/or assigns, "**Lender**"), and **OHIO COMMONS LLC**, an Illinois limited liability company, having an address at 351 W. Chicago Avenue, Chicago, Illinois 60654 (together with its successors and/or assigns, "**Borrower**").

RECITALS:

Borrower desires to obtain the Loan (defined below) from Lender.

Lender is willing to make the Loan to Borrower subject to and in accordance with the terms of this Agreement and the other Loan Documents (defined below).

In consideration of Lender's making the Loan and the covenants, agreements, representations and warranties set forth in this Agreement, the parties covenant, agree, represent and warrant as follows:

ARTICLE 1.

DEFINITIONS; REFERENCES

Section 1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, capitalized terms throughout this Agreement have the meanings given to them in the attached Exhibit A.

Section 1.2 Article, Section, Exhibit and Schedule References. Article, Section, Exhibit and Schedule references throughout this Agreement are to the respective Sections and Subsections within and the Exhibits and Schedules attached to this Agreement except as otherwise clearly indicated.

ARTICLE 2.

GENERAL TERMS

Section 2.1 The Loan. Subject to and upon the terms and conditions set forth herein, Lender agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

Section 2.2 Disbursement to Borrower. Borrower may request and receive only one borrowing of the Loan and any amount borrowed and repaid may not be re-borrowed.

Section 2.3 The Note and the other Loan Documents. The Loan shall be evidenced by the Note and this Agreement and secured by this Agreement, the Security Instrument and the other Loan Documents.

Section 2.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (i) acquire the Property and/or pay and discharge any existing loans relating to the Property, (ii) pay all past-due Taxes, Insurance Premiums and Other Charges, if any, in respect of the Property, (iii) make initial deposits of the Reserve Funds, (iv) pay costs and expenses incurred in connection with the closing of the Loan, and (v) to

the extent any proceeds remain after satisfying clauses (i) through (iv), for such lawful purpose as Borrower shall designate.

Section 2.5 Interest Rate.

(a) Interest Rate. Generally, interest on the outstanding principal balance of the Loan shall accrue from the Closing Date up to but excluding the Maturity Date at the Interest Rate.

(b) 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 Applicable Law, overdue interest in respect of the Loan, shall accrue interest at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein.

(c) Interest Calculation. Interest on the outstanding principal balance of the Loan shall accrue at the Interest Rate calculated on an Actual/360 Basis. Borrower acknowledges that interest calculated on an Actual/360 Basis exceeds interest calculated on a 30/360 Basis and, therefore: (i) a greater portion of each monthly installment of principal (if applicable) and interest will be applied to interest using the Actual/360 Basis than would be the case if interest accrued on a 30/360 Basis and (ii) the unpaid principal balance of the Loan on the Maturity Date will be greater using the Actual/360 Basis than would be the case if interest accrued on a 30/360 Basis.

(d) Usury Savings. The Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If by the terms of the Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use or forbearance 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 from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.6 Loan Payments.

(a) Payment Before Maturity. Borrower shall make a payment to Lender of interest only on the Closing Date for the period from the Closing Date through the last day of the month in which the Closing Date occurs (unless the Closing Date is the first day of a calendar month, in which case no such separate payment of interest shall be due). Borrower shall make a payment to Lender of interest in the amount accrued on the Monthly Payment Date occurring in June, 2014, and on each Monthly Payment Date thereafter to and including May, 2015. Thereafter, Borrower shall make a payment to Lender of principal (if applicable) and interest in the amount of the Monthly Debt Service Payment Amount on the Monthly Payment Date occurring in June, 2015, and on each Monthly Payment Date thereafter to and including the Maturity Date. Each payment shall be applied first to accrued and unpaid interest and the balance, if any, to principal. The Monthly Debt Service Payment Amount required hereunder (where such Monthly Debt Service Payment includes both principal and interest) is based upon a 30-year amortization schedule.

(b) Payment on Maturity. On the Maturity Date, Borrower shall pay to Lender the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due under the Loan Documents.

(c) Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents, other than the payment of principal due on the Maturity Date, is not paid by Borrower within 5 days when due, Borrower shall pay to Lender upon demand an amount equal to the lesser of 5% of such unpaid sum or the maximum amount permitted by Applicable Law in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Security Instrument and the other Loan Documents.

(d) Method and Place of Payment.

(i) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender no later than 1:00 P.M., North Carolina time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

(ii) If any payment to be made by Borrower is due on a day which is not a Business Day, the due date thereof shall be deemed to be the immediately succeeding Business Day.

(iii) All payments required to be made by Borrower shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and irrespective of any defense thereto.

Section 2.7 Prepayments.

(a) Prepayment. Except as otherwise provided herein, Borrower shall not have the right to prepay the Loan in whole or in part. On and after the Open Period Start Date, Borrower may, provided no Event of Default has occurred and is continuing, at its option and upon 30 days prior notice to Lender (or such shorter period of time as may be permitted by Lender in its sole discretion), prepay the Debt in whole (but not in part) on any Monthly Payment Date without payment of the Yield Maintenance Premium; provided Borrower shall pay to Lender on such prepayment date any applicable Interest Shortfall in addition to the outstanding principal balance, all accrued and unpaid interest and other amounts payable under the Loan Documents.

(b) Mandatory Net Proceeds Prepayment. On each date on which Lender actually receives a distribution of Net Proceeds, and if such Net Proceeds are not made available to Borrower for Restoration, Borrower shall prepay the outstanding principal balance of the Note in an amount equal to 100% of such Net Proceeds together with any applicable Interest Shortfall. No Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this Section 2.7(b).

(c) Prepayments After Default. If prior to the Open Period Start Date and either concurrently with or after an Event of Default has occurred and is continuing, payment of all or any part of the principal of the Loan is tendered by Borrower, a purchaser at foreclosure or any other Person, such tender shall be deemed an attempt to circumvent the prohibition against prepayment prior to the Open Period Start Date and Borrower, such purchaser at foreclosure or other Person shall pay the Yield Maintenance Premium and any applicable Interest Shortfall in addition to the outstanding principal balance, all accrued and unpaid interest and other amounts payable under the Loan Documents.

(d) Release of Lien. Except as expressly set forth in this Article 2, no repayment, prepayment or defeasance of all or any portion of the Note shall cause, give rise to a right to require or otherwise result in, the release of the lien of the Security Instrument.

Section 2.8 Defeasance.

(a) Provided no Event of Default has occurred and is continuing, Borrower shall have the right at any time after the Defeasance Lockout Release Date and prior to the Open Period Start Date to voluntarily defease the entire Loan and obtain a release of the lien of the Security Instrument by providing Lender with the Total Defeasance Collateral (hereinafter, a "**Total Defeasance Event**"), subject to the satisfaction of the following conditions precedent:

(i) Borrower shall provide Lender not less than 60 days' notice (or such shorter period of time if permitted by Lender in its sole discretion) but not more than 90 days' notice specifying a date (the "**Total Defeasance Date**") on which the Total Defeasance Event is to occur;

(ii) Borrower shall pay to Lender (A) all payments of principal and interest due and payable on the Loan to and including the Total Defeasance Date (provided that, if such Total Defeasance Date is not a Monthly Payment Date, Borrower shall also pay to Lender all payments of principal and interest due on the Loan to and including the next occurring Monthly Payment Date); (B) all other sums, if any, then due and payable under the Loan Documents through and including the Total Defeasance Date (or, if the Total Defeasance Date is not a Monthly Payment Date, the next occurring Monthly Payment Date); (C) all escrow, closing, recording, legal, appraisal, Rating Agency and other fees, costs and expenses paid or incurred by Lender or its agents in connection with the Total Defeasance Event, the release of the lien of Security Instrument on the Property, the review of the proposed Total Defeasance Collateral and the preparation of the Security Agreement and related documentation; and (D) any revenue, documentary stamp, intangible or other taxes, charges or fees due in connection with the transfer or assumption of the Note and/or the Total Defeasance Event.

(iii) Borrower shall deposit the Total Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with the provisions of Section 2.8(c);

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

(v) Borrower shall deliver to Lender an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Total Defeasance Collateral; (B) if a Securitization has occurred (1) the REMIC Trust formed pursuant to such Securitization and/or any subsequent or prior Securitization of the Loan or any portion thereof or interest therein will each not fail to maintain their respective status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the IRS Code as a result of a Total Defeasance Event pursuant to this Section 2.8 and (2) the Total Defeasance Event would not (I) constitute a "significant modification" of the Loan within the meaning of Treasury Regulation Section 1.1001-3 or (II) cause the Loan to fail to be a "qualified mortgage" within the meaning of Section 860G(a)(3)(A) of the IRS Code; and (C) the Total Defeasance Event will not result in a deemed exchange for purposes of the IRS Code and will not adversely affect the status of the Note as indebtedness for federal income tax purposes;

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

(vii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this Section 2.8 have been satisfied;

(viii) Borrower shall deliver a certificate of a "big four" or other nationally recognized public accounting firm acceptable to Lender certifying that the Total Defeasance Collateral will generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

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

(x) Borrower shall pay all costs and expenses of Lender incurred in connection with the Total Defeasance Event, including, without limitation, Lender's reasonable attorneys' fees and expenses and Rating Agency fees and expenses.

(b) If Borrower has elected to defease the entire Note and the requirements of this Section 2.8 have been satisfied, the Property shall be released from the lien of the Security Instrument and the Total Defeasance Collateral pledged pursuant to the Security Agreement shall be the sole source of collateral securing the Note. In connection with the release of the lien, Borrower shall submit to Lender, not less than 30 days prior to the Total Defeasance Date (or such shorter time as is acceptable to Lender in its sole discretion), a release of lien (and related Loan Documents) for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and shall contain standard provisions protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Applicable Law, and (ii) will affect such release in accordance with the terms of this Agreement. Borrower shall pay all costs, taxes and expenses associated with the release of the lien of the Security Instrument, including Lender's reasonable attorneys' fees.

(c) On or before the date on which Borrower delivers the Total Defeasance Collateral, Borrower or Successor Borrower (as applicable) shall open at any Eligible Institution an Eligible Account (the "**Defeasance Collateral Account**"). The Defeasance Collateral Account shall contain only (i) the Total Defeasance Collateral, and (ii) cash from interest and principal paid on the Total Defeasance Collateral. All cash from interest and principal payments paid on the Total Defeasance Collateral shall be paid over to Lender on each Monthly Payment Date and applied first to accrued and unpaid interest and then to principal. Any cash from interest and principal paid on the Total Defeasance Collateral not needed to pay the Scheduled Defeasance Payments shall be paid to Borrower or Successor Borrower (as applicable). Borrower or Successor Borrower (as applicable) shall cause the Eligible Institution at which the Total Defeasance Collateral is deposited to enter into an agreement with Borrower or Successor Borrower (as applicable) and Lender, satisfactory to Lender in its sole discretion, pursuant to which such Eligible Institution shall agree to hold and distribute the Total Defeasance Collateral in accordance with this Agreement. Borrower or Successor Borrower (as applicable) shall be the owner of the Defeasance Collateral Account and shall report all income accrued on Total Defeasance Collateral for federal, state and local income tax purposes in its income tax return. Borrower shall prepay all cost and expenses associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account.

(d) In connection with a Total Defeasance Event under this Section 2.8, Borrower shall transfer and assign all obligations, rights and duties under and to the Note and the Security Agreement,

together with the Total Defeasance Collateral to a newly-created successor entity, which entity shall be a Single Purpose Entity and which entity shall be designated or established by Lender, at Lender's option ("**Successor Borrower**"). Lender shall also have the right to purchase on behalf of Borrower, or cause to be purchased on behalf of Borrower, the pledged Total Defeasance Collateral. Such rights to designate or establish Successor Borrower as provided above or to purchase, or cause the purchase of, on behalf of Borrower the pledged Total Defeasance Collateral as provided above may be exercised by Wells Fargo in its sole discretion and shall be retained by Wells as the original Lender herein (and any successor or assign of Wells under a specific assignment of such retained rights separate and apart from a Secondary Market Transaction related to all or any portion of the Loan), notwithstanding any Secondary Market Transaction related to all or any portion of the Loan. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under the Loan Documents (other than those obligations which by their terms survive a repayment, defeasance or other satisfaction of the Loan and/or a transfer of the Property in connection with Lender's exercise of its remedies under the Loan Documents). Borrower shall pay a minimum of \$1,000.00 to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Borrower shall pay all costs and expenses incurred by Lender, including the cost of establishing Successor Borrower and Lender's attorney's fees and expenses, incurred in connection therewith.

(e) Notwithstanding anything to the contrary contained in this Section 2.8, the parties hereto hereby acknowledge and agree that after the Securitization of the Loan (or any portion thereof or interest therein), with respect to any Lender approval or similar discretionary rights over any matters contained in this Section (any such matter, a "**Defeasance Approval Item**"), such rights shall be construed such that Lender shall only be permitted to withhold its consent or approval with respect to any Defeasance Approval Item if the same fails to meet the Prudent Lender Standard.

ARTICLE 3.

EXCULPATION

Section 3.1 Exculpation.

Subject to the qualifications below, Lender shall not enforce Borrower's liability and obligation to perform and observe the obligations contained in the Loan Documents by any action or proceeding wherein a money judgment, 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 (and specifically including Guarantor, except for such liability provided for in the Guaranty and Environmental Indemnity) or any legal representatives, successors or assigns of any of the foregoing (collectively, the "**Exculpated Parties**"), except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Loan Documents or in the Property, the Rents or any other collateral given to Lender pursuant to the Loan Documents; provided, however, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, the Rents and any other collateral given to Lender, and Lender shall not sue for, seek or demand any deficiency judgment against Borrower or any of the Exculpated Parties in any such action or proceeding by reason of or in connection with the Loan Documents. Notwithstanding the foregoing, the provisions of this Section 3.1 shall not constitute a waiver of Lender's right to enforce Borrower's liability and obligation of Borrower, by money judgment or otherwise, to the extent of any Losses incurred by Lender arising out of or in connection with any of the following:

(i) fraud or intentional misrepresentation or any failure to disclose a material fact by Borrower, Guarantor or any Borrower Party in connection with the Loan;

(ii) the gross negligence or willful misconduct of Borrower, Guarantor or any Borrower Party;

(iii) the commission of a criminal act by Borrower, Guarantor or any Borrower Party which results in any seizure or forfeiture of the Property, or any portion thereof, or Borrower's interest therein;

(iv) material physical waste to the Property caused by the intentional acts or intentional omissions of Borrower, Guarantor or any Borrower Party and/or the removal or disposal of any portion of the Property after an Event of Default by Borrower, Guarantor or any Borrower Party;

(v) the misapplication, misappropriation or conversion by Borrower of any (A) Net Proceeds, (B) Awards, (C) Rents, (D) Rents collected in advance or (E) security deposits, advance deposits or any other deposits collected with respect to the Property;

(vi) failure to pay any Taxes or Other Charges, charges for labor or materials or any other charges that can create liens on any portion of the Property to the extent that the revenue from the Property is sufficient to pay such amounts (other than (x) amounts deposited with Lender into the Tax Account for Taxes or Other Charges where Lender elects not to apply such funds toward payment of such Taxes or Other Charges owed or (y) Taxes or Other Charges owed that are contested strictly in accordance with the terms of the Loan Documents);

(vii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity, this Agreement or in the Security Instrument concerning Environmental Laws or Hazardous Substances;

(viii) any fees or commissions paid by Borrower after the occurrence of any Event of Default to Guarantor and/or any Affiliate of Borrower and/or Guarantor in violation of the terms of the Loan Documents;

(ix) failure to maintain insurance as required by this Agreement to the extent that the revenue from the Property is sufficient to pay the Insurance Premiums relating thereto (other than the failure to pay amounts deposited with Lender into the Insurance Account for Insurance Premiums where Lender elects not to apply such funds toward payment of such Insurance Premiums);

(x) failure to make any payment required pursuant to Section 9.4(d);

(xi) Borrower's breach of, or failure to comply with, the representations, warranties and covenants contained in Articles 7 or 14 and/or the provisions of Sections 12.2 and 12.3;

(xii) any litigation or other legal proceeding related to the Debt filed by Borrower, Guarantor or any Borrower Party that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates Lender's efforts to exercise any rights and remedies available to Lender as provided in the Loan Documents or under Applicable Law; and/or

(xiii) failure of the Property to fully conform with applicable laws pertaining to its use and/or zoning.

Notwithstanding anything to the contrary in the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender 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 or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents and (B) the Debt shall be fully recourse to Borrower in the event that: (i) if any Sale or Pledge occurs that is not a Permitted Transfer; (ii) Borrower files a voluntary petition under the Bankruptcy Code or any other Creditors Rights Laws; (iii) any Affiliate of Borrower, Guarantor or any Affiliate of Guarantor files, or joins in the filing of, an involuntary petition against Borrower under the Bankruptcy Code or any other Creditors Rights Laws or solicits or causes to be solicited petitioning creditors for any such involuntary petition against Borrower; (iv) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Creditors Rights Laws or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; (v) any Affiliate of Borrower, Guarantor or any Affiliate of Guarantor consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver trustee, or examiner for Borrower or any portion of the Property; (vi) Borrower makes an assignment for the benefit of creditors, or admits in any legal proceeding, its insolvency or inability to pay its debts as they become due; (vii) there is substantive consolidation of Borrower (or any Restricted Party) with any other Person in connection with any bankruptcy proceeding involving Guarantor or any Affiliate of Guarantor; (viii) Borrower (or any Restricted Party) contests or opposes any motion made by Lender to obtain relief from the automatic stay or seeks to reinstate the automatic stay in the event of any bankruptcy or insolvency proceeding involving Guarantor or any Affiliate of Guarantor; or (ix) Borrower fails to timely complete the Immediate Repairs as required under Section 4.1 of this Agreement.

Section 3.2 Survival. The obligations and liabilities of Borrower under this Article 3 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

ARTICLE 4.

RESERVE FUNDS

Section 4.1 Immediate Repair Funds. Borrower shall perform the repairs at the Property identified on Schedule I (such repairs hereinafter referred to as "**Immediate Repairs**") and shall complete each of the Immediate Repairs on or before the respective deadline (which such deadlines Lender may extend, in its sole discretion, by written notice to Borrower) set forth on Schedule I. On the Closing Date, Borrower shall deposit into an account held by Lender (the "**Immediate Repair Account**") an amount equal to \$0.00 for the Immediate Repairs (collectively, the "**Immediate Repair Funds**"). The Immediate Repair Funds shall be disbursed as provided in Section 4.4.

Section 4.2 Replacement Reserve Funds. Borrower shall deposit into an account held by Lender (the "**Replacement Reserve Account**") on each Monthly Payment Date an amount equal to \$687.50 (the "**Replacement Reserve Monthly Deposit**") for the Replacements. Amounts deposited pursuant to this Section are referred to as the "**Replacement Reserve Funds**". Lender may reassess its estimate of the amount necessary for Replacements from time to time (but not more than once per year) and may require Borrower to increase the monthly deposits required pursuant to this Section upon 30 days' notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary

to maintain proper operations of the Property. The Replacement Reserve Funds shall be disbursed as provided in Section 4.4.

Section 4.3 Intentionally Omitted.

Section 4.4 Disbursements.

(a) Provided no Event of Default has occurred and is continuing, Lender shall disburse the Immediate Repair Funds and the Replacement Reserve Funds (as applicable) with respect to the applicable Immediate Repairs and/or Replacements (as applicable, the "**Reserve Work**") to Borrower within 15 Business Days after the delivery by Borrower to Lender of a request therefor (but not more often than once per month), in increments of at least the Minimum Disbursement Amount (or a lesser amount if the total amount remaining in the applicable account is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining shall be made), accompanied by the following items (which items shall be in form and substance satisfactory to Lender): (i) an Officer's Certificate (A) stating that the Reserve Work (or relevant portion thereof) to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all Applicable Law, (B) identifying each Person that supplied materials or labor in connection with the Reserve Work to be funded by the requested disbursement, (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, 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, (D) stating that the Reserve Work (or relevant portion thereof) to be funded has not been the subject of a previous disbursement, and (E) stating that all previous disbursements for Reserve Work have been used to pay the previously identified Reserve Work, (ii) as to any completed Reserve Work, a copy of any license, permit or other approval by any Governmental Authority required, if any, in connection with the Reserve Work and not previously delivered to Lender, (iii) copies of appropriate lien waivers (or conditional lien waivers) or other evidence of payment satisfactory to Lender, (iv) at Lender's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances other than Permitted Encumbrances, (v) at Lender's option, if the cost of the Reserve Work exceeds \$25,000, Lender shall have received a report satisfactory to Lender in its reasonable discretion from an architect or engineer approved by Lender in respect of such architect or engineer's inspection of such Reserve Work, and (vi) such other evidence as Lender shall reasonably request to demonstrate that the Reserve Work to be funded by the requested disbursement has been completed (or completed to the extent of the requested payment) and has been paid for or will be paid upon such disbursement to Borrower.

(b) Intentionally omitted.

Section 4.5 Tax and Insurance Funds. On the Closing Date, Borrower shall deposit, or cause to be deposited (i) \$3,087.68 with respect to Taxes into an account held by Lender and hereinafter referred to as the "**Tax Account**" and (ii) \$5,283.09 with respect to Insurance Premiums into an account held by Lender and hereinafter referred to as the "**Insurance Account**". In addition to the initial deposits made by Borrower into the Tax Account and Insurance Account pursuant to the terms hereof, Borrower shall pay (or cause to be paid) to Lender on each Monthly Payment Date (a) 1/12th of an amount sufficient to pay the Taxes payable, or reasonably estimated by Lender to be payable, during the next ensuing 12 months (the "**Monthly Tax Deposit**") to be held in the Tax Account and (b) at Lender's option, if the liability or casualty Policy maintained by Borrower covering the Property does not constitute an approved blanket or umbrella Policy pursuant to Section 9.1(c) or Lender requires Borrower to obtain a separate Policy pursuant to Section 9.1(c), 1/12th of an amount sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the "**Monthly Insurance Deposit**") to be held in the Insurance Account (amounts held in the Tax Account

and the Insurance Account are collectively referred to as the "**Tax and Insurance Funds**"). The initial estimated Monthly Tax Deposit shall be \$1,186.69 and the initial estimated Monthly Insurance Deposit shall be \$880.50. In the event Lender shall elect, after the Closing Date, to collect payments in escrow for Insurance Premiums, Borrower shall pay to Lender an initial deposit to be determined by Lender, in its reasonable discretion, to increase the amounts in the Insurance Account to an amount which, together with anticipated monthly escrow payments, shall be sufficient to pay all Insurance Premiums as they become due. Borrower shall immediately notify Lender of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes directly from the appropriate taxing authority. Provided there are sufficient amounts in the Tax Account and the Insurance Account, respectively, and no Event of Default has occurred and is continuing, Lender shall pay (on behalf of Borrower) the Taxes and Insurance Premiums from the respective Tax and Insurance Funds as they become due. If the amount of the Tax and Insurance Funds exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 6.5 and 9.1, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax Account and/or the Insurance Account. If the Tax and Insurance Funds are not sufficient to pay the amounts set forth above, Borrower shall pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency.

Section 4.6 Intentionally Omitted.

Section 4.7 The Accounts Generally.

(a) Borrower grants to Lender a first-priority perfected security interest in each of the Accounts and any and all funds now or hereafter deposited in the Accounts as additional security for payment of the Debt until expended or applied by Lender as provided in the Loan Documents. The provisions of this Section 4.6 are intended to give Lender and/or Servicer "control" of the Accounts and the Account Collateral within the meaning of the UCC. Borrower acknowledges and agrees that the Accounts are subject to the sole dominion, control and discretion of Lender, its authorized agents or designees, subject to the terms hereof and Borrower shall have no right of withdrawal with respect to any Account except with prior written consent or as otherwise provided herein. The funds on deposit in the Accounts shall not constitute trust funds and may be commingled with other monies held by Lender.

(b) Borrower shall not, without obtaining Lender's prior written consent, further pledge, assign or grant any security interest in the Accounts or the funds deposited therein or permit any lien to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall have the right to file a financing statement or statements under the UCC in connection with any of the Accounts and the Account Collateral with respect thereto in the form required to properly perfect Lender's security interest therein.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon the occurrence and during the continuance of an Event of Default, without notice from Lender or Servicer (i) Borrower shall have no rights in respect of the Accounts and (ii) Lender shall have all rights and remedies with respect to the Accounts and the amounts on deposit therein and the Account Collateral as described in this Agreement and in the Security Instrument, in addition to all of the rights and remedies available to a secured party under the UCC, and, notwithstanding anything to the contrary contained in this Agreement or in the Security Instrument, may apply the amounts of such Accounts as Lender determines in its sole discretion including, but not limited to, payment of the Debt.

(d) The insufficiency of funds on deposit in the Accounts shall not absolve Borrower of the obligation to make any payments, as and when due under the Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(e) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Accounts, the funds deposited therein or the performance of the obligations for which the Accounts were established, except to the extent arising from the gross negligence or willful misconduct of Lender, its agents or employees. Borrower hereby assigns to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Accounts; provided, however, Lender may not pursue any such right or claim unless an Event of Default has occurred and is continuing.

(f) Funds deposited in the Tax Account, the Insurance Account, the Immediate Repair Account and the Replacement Reserve Account shall each be held in non-interest bearing accounts.

(g) Borrower is and shall at all times remain liable to Lender or Servicer for all fees, charges, costs and expenses in connection with the Accounts, this Agreement and the enforcement hereof, including, without limitation, any monthly or annual fees or charges as may be assessed by Lender or Servicer in connection with the administration of the Accounts and the reasonable fees and expenses of Lender's and Servicer's legal counsel as needed to enforce, protect or preserve the rights and remedies of Lender and/or Servicer under this Agreement.

ARTICLE 5.

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as of the Closing Date that:

Section 5.1 Legal Status and Authority. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of formation; (b) is duly qualified to transact business and is in good standing in the State; and (c) has all necessary approvals, corporate, governmental and otherwise, and full power and authority to own, operate and lease the Property. Borrower has full power, authority and legal right to mortgage and encumber the Property pursuant to the terms hereof and to keep and observe all of the terms of the Loan Documents to be performed by Borrower.

Section 5.2 Validity of Documents. (a) The execution, delivery and performance of the Loan Documents by Borrower and its applicable Affiliates and the borrowing evidenced by the Note and this Agreement (i) are within the power and authority of such parties; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or Governmental Authority, any license, certificate or other approval required to operate the Property, Borrower's or such other party's organizational documents, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected, including, without limitation, the Management Agreement; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby and by the other Loan Documents; and (vi) will not require any authorization or license from, or any filing with, any Governmental Authority (except for the recordation of the Security Instrument and the Assignment in appropriate land records in the State and except for Uniform Commercial Code filings relating to the security interest created hereby) and (b) the Loan Documents have been duly executed and delivered by Borrower through the undersigned authorized representative of Borrower. The Loan Documents are not subject to any right of rescission, set-off,

counterclaim or defense by Borrower or any other Person, including the defense of usury, and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

Section 5.3 Litigation. There is no action, suit, investigation, arbitration or proceeding, judicial, governmental, administrative or otherwise (including any Condemnation or similar proceeding), pending, filed, or, to the best of Borrower's knowledge, threatened or contemplated against or affecting Borrower or Guarantor or affecting the Property that has not been disclosed to Lender by Borrower in writing in connection with the closing of the Loan, is not fully covered by insurance or, if determined adversely to Borrower, would have a material adverse effect on (a) Borrower's title to the Property, (b) the validity or enforceability of the Security Instrument, (c) Borrower's ability to perform under the Loan Documents, (d) Guarantor's ability to perform under the Guaranty, (e) the use, operation or value of the Property, (f) the principal benefit of the security intended to be provided by the Loan Documents, or (g) the ability of the Property to generate net cash flow sufficient to pay the debt service and other amounts due under the Loan.

Section 5.4 Agreements. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property and (b) obligations under this Agreement, the Security Instrument, the Note and the other Loan Documents. There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Loan Documents to an obligation owed to another party.

Section 5.5 Financial Condition.

(a) Borrower is solvent, and no proceeding under any Creditors Rights Laws with respect to Borrower or the Property (or any portion thereof) has been initiated and Borrower has received reasonably equivalent value for the granting of the Security Instrument.

(b) (i) no petition in bankruptcy has been filed by or against Borrower, Guarantor or any related entity, or any principal, general partner or member thereof and (ii) neither Borrower, Guarantor nor any related entity, or any principal, general partner or member thereof has ever made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws.

(c) Borrower is not contemplating either the filing of a petition by it under any Creditors Rights Laws or the liquidation of its assets or property and Borrower does not have any knowledge of any Person contemplating the filing of any such petition against it.

Section 5.6 No Plan Assets. As of the date hereof and throughout the term of the Loan (a) Borrower is not and will not be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (b) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, (c) transactions by or with Borrower are not and will not be subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (d) 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. As of the date hereof, neither Borrower, nor any member of a "controlled group of corporations" (within the meaning of Section 414 of the IRS Code) maintains, sponsors or contributes to a "defined benefit plan" (within the meaning of Section 3(35) of ERISA) or a "multiemployer pension plan" (within the meaning of Section 3(37)(A) of ERISA).

Section 5.7 Not a Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the IRS Code.

Section 5.8 Business Purposes. The Loan is solely for Borrower's business purposes, and is not for personal, family, household or agricultural purposes.

Section 5.9 Status of Property.

(a) Borrower has obtained all material certificates, licenses, permits, franchises, consents and other approvals, governmental and otherwise, necessary for the ownership and operation of the Property and the conduct of its business (collectively, "Licenses") and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use laws, Environmental Laws and other similar Applicable Law.

(c) The Property is served by all utilities necessary for its current or contemplated use and such utilities (including, without limitation, water and sewage) are adequate for the current or contemplated use. All utility services, including, without limitation, water and sewage, are provided by public utilities and the Property has accepted or is equipped to accept such utility services.

(d) All public roads and streets necessary for service of and access to the Property for its current or contemplated use have been completed, are serviceable and all-weather and are physically and legally open for use by the public. The Property has either direct access to such public roads or streets or access thereto by virtue of a perpetual easement or similar agreement inuring in favor of Borrower and any subsequent owners of the Property.

(e) The Property is free from damage caused by Casualty. The Property is in good condition, order and repair in all material respects; there exists no structural or other material defects or damages in the Property, latent or otherwise; and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability thereof or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any Policy or bond.

(f) All costs and expenses of all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under Applicable Law could give rise to any such liens) affecting the Property.

(g) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than Tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created by the Loan Documents.

(h) No portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such an area, Borrower has obtained and will maintain the insurance prescribed in Section 9.1(a). No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(i) Except for encroachments that are insured against pursuant to the Title Insurance Policy or otherwise do not cause a Material Adverse Effect, all the Improvements lie within the boundaries of the Land and any building restriction lines applicable to the Land and no improvements on adjoining properties encroach onto the Property.

(j) To Borrower's knowledge after due inquiry, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

Section 5.10 Condemnation. No Condemnation or other proceeding has been commenced, is pending or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of the access to the Property.

Section 5.11 Separate Lots. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.12 Use of Property. The Property is used exclusively as multifamily residential apartment building and other appurtenant and related uses.

Section 5.13 Leases and Rent Roll. Except as disclosed in the Rent Roll or in Tenant estoppels delivered to and approved by Lender, (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable against Borrower and the Tenants set forth therein and are in full force and effect; (c) all of the Leases are arms-length agreements with bona fide, independent third parties; (d) no party under any Lease is in default; (e) all Rents due have been paid in full and no Tenant is in arrears in its payment of Rent; (f) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (g) none of the Rents have been collected for more than 1 month in advance (except a security deposit shall not be deemed rent collected in advance); (h) the premises demised under the Leases have been completed and the related Tenants have accepted and taken possession of those premises on a rent-paying basis with no rent concessions to any Tenants; (i) there exist no offsets or defenses to the payment of any portion of the Rents and Borrower has no monetary obligation to any Tenant under any Lease; (j) Borrower has received no notice from any Tenant challenging the validity or enforceability of any Lease; (k) there are no agreements with the Tenants under the Leases other than expressly set forth in each Lease; (l) no Lease contains an option to purchase, right of first refusal to purchase, right of first refusal to lease additional space at the Property, or any other similar provision; (m) no Lease contains unilateral rights for Tenant to terminate or co-tenancy provisions; (n) no Person has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (o) no Tenants have exercised any right to "go dark" that they may have under their Leases and no event has occurred that, but for the giving of notice and/or passage of time, would give any Tenant any right to abate rent, "go dark" or terminate any Lease; (p) all security deposits relating to the Leases reflected on the Rent Roll have been collected by Borrower; (q) no brokerage commissions or finders fees are due and payable regarding any Lease; (r) each Tenant is in actual, physical occupancy of the premises demised under its Lease and is paying full rent under its Lease; and (s) no Tenant occupying 20% or more (by square feet) of the net rentable area of the Property is, to Borrower's knowledge, a debtor in any bankruptcy, insolvency or similar proceeding.

Section 5.14 Management Agreement. The Management Agreement is in full force and effect without default by any party and, to Borrower's knowledge, no event has occurred that with the passage of time and/or the giving of notice would constitute a default thereunder.

Section 5.15 Illegal Activity/Forfeiture. No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and, to Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of medicinal marijuana). There has not been committed by Borrower, any of its Affiliates or, to Borrower's knowledge, any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under the Loan Documents. Borrower covenants and agrees not to commit, permit or suffer to exist any act or omission affording any such right of forfeiture. Borrower also hereby covenants and agrees that it shall not commit, permit or suffer to exist any illegal activities or activities relating to controlled substances at the Property (including, without limitation, any growing, distributing and/or dispensing of medicinal marijuana).

Section 5.16 Taxes. Borrower has filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. To Borrower's knowledge after due inquiry, there is no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.17 Permitted Encumbrances. None of the Permitted Encumbrances, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Loan Documents, materially and adversely affects the value or marketability of the Property, impairs the use or the operation of the Property or impairs Borrower's ability to pay its obligations in a timely manner.

Section 5.18 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 Applicable Law or by the terms and conditions of the Loan Documents.

Section 5.19 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 5.20 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any transfers of interests permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower or Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or country which is a sanctioned person, entity or country under U.S. law, including but not limited to, 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 regulations administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury and the Specially Designated Nationals List maintained by OFAC) with the result that the investment in Borrower and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan made by Lender is in violation of Applicable Law ("**Embargoed Person**"); (b) unless expressly waived in writing by Lender, no Embargoed Person has any interest of any nature whatsoever in Borrower or

Guarantor, as applicable, with the result that the investment in Borrower and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law; and (c) to the best knowledge of Borrower, 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 and/or Guarantor, as applicable (whether directly or indirectly), is prohibited by Applicable Law or the Loan is in violation of Applicable Law. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property is designated as an Embargoed Person, Borrower shall immediately notify Lender in writing. At Lender's option, it shall be an Event of Default hereunder if Borrower, Guarantor or any other party to the Loan is designated as an Embargoed Person.

Section 5.21 Patriot Act. All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act (collectively referred to in this Section only as the "Patriot Act") are incorporated into this Section. Borrower hereby represents and warrants that Borrower and Guarantor and each and every Person affiliated with Borrower and/or Guarantor or that to Borrower's knowledge has an economic interest in Borrower, or, to Borrower's knowledge, that has or will have an interest in the transaction contemplated by this Agreement or in the Property or will participate, in any manner whatsoever, in the Loan, is: (i) in full compliance with all applicable requirements of the Patriot Act and any regulations issued thereunder; (ii) operated under policies, procedures and practices, if applicable, that are in compliance with the Patriot Act and available to Lender for Lender's review and inspection during normal business hours and upon reasonable prior notice; (iii) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Act; (iv) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Act; and (v) not owned or controlled by or now acting and or will in the future act for or on behalf of any person who has been determined to be subject to the prohibitions contained in the Patriot Act. Borrower covenants and agrees that in the event Borrower receives any notice that Borrower or Guarantor (or any of their respective beneficial owners, affiliates or participants) or any Person that has an interest in the Property is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Borrower shall immediately notify Lender. At Lender's option, it shall be an Event of Default hereunder if Borrower, Guarantor or any other party to the Loan is indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

Section 5.22 Bank Holding Company. Borrower is not a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System.

Section 5.23 Material Agreements. With respect to each Material Agreement, (a) each Material Agreement is in full force and effect and has not been amended, restated, replaced or otherwise modified (except, in each case, as expressly set forth herein), (b) there are no defaults under any Material Agreement by any party thereto and, to Borrower's knowledge, no event has occurred which, but for the passage of time, the giving of notice, or both, would constitute a default under any Material Agreement, (c) all payments and other sums due and payable under the Material Agreements have been paid in full, (d) no party to any Material Agreement has commenced any action or given or received any notice for the purpose of terminating any Material Agreement, and (e) the representations made in any estoppel or similar document delivered with respect to any Material Agreement in connection with the Loan are true, complete and correct and are hereby incorporated by reference as if fully set forth herein.

Section 5.24 REA Representations. With respect to each REA, (a) each REA is in full force and effect and has not been amended, restated, replaced or otherwise modified (except, in each case, as expressly set forth herein), (b) there are no defaults under any REA by any party thereto and, to Borrower's knowledge, no event has occurred which, but for the passage of time, the giving of notice, or both, would constitute a default under any REA, (c) all sums due and payable under each REA have been paid in full, (d) no party to any REA has commenced any action or given or received any notice for the purpose of terminating any REA, and (e) the representations made in any estoppel or similar document delivered with respect to any REA in connection with the Loan, if any, are true, complete and correct and are hereby incorporated by reference as if fully set forth herein.

Section 5.25 Survival. Unless expressly provided otherwise, all of the representations and warranties of Borrower set forth in this Article 5 and elsewhere in this Agreement and the other Loan Documents shall survive for so long as any portion of the Debt remains owing to Lender. All representations, warranties, covenants and agreements made in this Agreement and in the other Loan Documents shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE 6.

BORROWER 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 Security Instrument (and all related obligations) in accordance with the terms of the Loan Documents, Borrower hereby covenants and agrees with Lender that:

Section 6.1 Existence. Borrower will continuously maintain (a) its existence and shall not dissolve or permit its dissolution, (b) its rights to do business in the applicable State and (c) its franchises and trade names, if any.

Section 6.2 Applicable Law.

(a) Borrower shall promptly comply and shall cause the Property to comply in all material respects with all Applicable Law affecting Borrower or the Property or the use thereof, including, without limitation, all Environmental Laws.

(b) 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, trade names and franchises.

(c) Borrower shall give prompt notice to Lender of Borrower's receipt of any notice related to a violation of any Applicable Law and of the commencement of any proceedings or investigations which relate to compliance with Applicable Law.

(d) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Applicable Law, the applicability of any Applicable Law to Borrower or the Property or any alleged violation of any Applicable Law; provided that (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with all Applicable Law, as well as under the provisions of any instrument to which Borrower is subject (and shall not constitute a default thereunder); (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (iv) upon final determination thereof,

Borrower shall promptly comply with any such Applicable Law determined to be valid or applicable or cure any violation thereof; (v) such proceeding shall suspend the enforcement of the contested Applicable Law against Borrower or the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Applicable Law, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to cause compliance with such Applicable Law at any time when, in Lender's judgment, the validity, applicability or violation of such Applicable Law is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost, or the use or occupancy of the Property enjoined or otherwise required to be materially changed or limited.

Section 6.3 Maintenance and Use of Property. Borrower shall cause the Property to be maintained in a good and safe condition and repair in all material respects. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without Lender's prior written consent or as otherwise permitted pursuant to Section 6.17. Borrower shall not initiate, join in acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without Lender's prior written consent.

Section 6.4 Waste. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security for the Loan. Borrower will not, without Lender's prior written consent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Property, regardless of the depth thereof or the method of mining or extraction thereof.

Section 6.5 Taxes and Other Charges.

(a) Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes and Other Charges shall be suspended for so long as Borrower complies with the terms and provisions of Section 4.5. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes and Other Charges in the event that such Taxes and Other Charges have been paid by Lender pursuant to Section 4.5). Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge which may be or become a lien or charge against the Property and shall promptly pay for all utility services provided to the Property.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with all Applicable Law, as well as under the provisions of any other instrument to which Borrower is subject (and shall not constitute a default thereunder); (iii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost;

(iv) upon final determination thereof, Borrower shall promptly pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vi) Borrower shall furnish such security as may be required in the proceeding or deliver to Lender such reserve deposits as may be requested by Lender to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in Lender's judgment, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost, or the use or occupancy of the Property enjoined or otherwise required to be materially changed or limited or there shall be any danger of the lien of the Security Instrument being primed by any related lien.

Section 6.6 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower which might have a Material Adverse Effect.

Section 6.7 Access to Property. Borrower shall permit Lender's agents, representatives and employees to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice.

Section 6.8 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect Lender's rights under any of the Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

Section 6.9 Awards. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Net Proceeds lawfully or equitably payable in connection with the Property and Lender shall be reimbursed for any expenses incurred in connection therewith (including reasonable, actual attorneys' fees and disbursements and the payment by Lender of the expense of an appraisal on behalf of Borrower in case of a Casualty or Condemnation affecting the Property) out of such Awards or Net Proceeds.

Section 6.10 Books and Records; Reporting.

(a) Borrower shall keep adequate books and records of account in accordance with GAAP or other methods acceptable to Lender in its reasonable discretion (consistently applied), and furnish to Lender:

(i) quarterly (other than for a single-tenant property) (and prior to Securitization, monthly) and annual certified Rent Rolls (in the form approved by Lender in connection with the closing of the Loan) signed and dated by a Responsible Officer of Borrower, within 30 days after the end of each calendar quarter;

(ii) quarterly (other than for a single-tenant property) (and prior to Securitization, monthly) and annual operating statements of the Property, prepared and certified by a Responsible Officer of Borrower in the form required by Lender, detailing the revenues received, the expenses incurred and capital improvements made during the calculation period and containing appropriate year-to-date information, within 30 days after the end of each calendar quarter; and

(iii) by no later than December 15th of each calendar year, an annual operating budget for the next succeeding calendar year presented on a monthly basis consistent with the

annual operating statement described above for the Property, including cash flow projections for the upcoming year and all proposed capital replacements and improvements (the "**Annual Budget**").

(b) Intentionally omitted.

(c) Within 10 days of Lender's request, Borrower shall furnish Lender (and shall cause Guarantor to furnish to Lender) with such other additional financial or management information (including State and Federal tax returns) reasonably required by Lender from time to time in form and substance satisfactory to Lender. Borrower shall furnish to Lender and its agents convenient facilities for the examination and audit of any such books and records at any reasonable time from time to time during business hours upon reasonable advance notice.

(d) If any financial statement or other items required to be delivered to Lender pursuant to this Section 6.10 (each a "**Required Financial Item**" and, collectively, the "**Required Financial Items**"), is not timely delivered following written notice from Lender ("**Reporting Failure**") Borrower shall promptly pay to Lender, as a late charge, the sum of \$500.00 per Required Financial Item. In addition, Borrower shall promptly pay to Lender an additional late charge of \$500.00 per Required Financial Item for each full month during which such Reporting Failure continues. Borrower acknowledges that Lender will incur additional expenses as a result of any such Reporting Failure, which expenses would be impracticable to quantify, and that Borrower's payments under this Section 6.10 are a reasonable estimate of such expenses. Borrower acknowledges further that Borrower's payment of this late charge does not in any manner affect or otherwise impair or waive any of Lender's rights and/or remedies under the Loan Documents or under Applicable Law for any Event of Default.

Section 6.11 Leases and Rents.

(a) Upon request, Borrower shall furnish Lender with executed copies of all Leases then in effect. All renewals of Leases and all proposed leases shall provide for rental rates and terms comparable to existing local market rates and shall be arm's length transactions with bona fide, independent third-party Tenants. Within 10 days after the execution of a Lease or any renewals, amendments or modification of a Lease, Borrower shall deliver to Lender a copy thereof, together with Borrower's certification that such Lease (or such renewal, amendment or modification) was entered into in accordance with the terms of this Agreement.

(b) Any Lease and any renewals, amendments or modification of a Lease (provided such Lease or Lease renewal, amendment or modification is not a Major Lease (or a renewal, amendment or modification to a Major Lease)) that meets the following requirements may be entered into by Borrower without Lender's prior consent: such Lease (i) provides for rental rates comparable to existing local market rates for similar properties and is otherwise on commercially reasonable terms, (ii) unless a subordination, non-disturbance and attornment agreement is delivered pursuant to this Section 6.11, provides that such Lease is subordinate to the Security Instrument and that the lessee will attorn to Lender and any purchaser at a foreclosure sale, (iii) is written substantially in accordance with the standard form of Lease which shall have been approved by Lender (subject to any commercially-reasonable changes made in the course of negotiations with the applicable Tenant), (iv) is not with an Affiliate of Borrower or any Guarantor, and (v) does not contain any option to purchase, any right of first refusal to purchase, any right to terminate (except in the event of the destruction or condemnation of substantially all of the Property) or any other terms which would cause a Material Adverse Effect. All other Leases (including Major Leases) and all renewals, amendments and modifications thereof (including, without limitation, any subletting or assignment thereunder not contemplated by the express terms of such Lease (other than any subletting or assignment which does not require Borrower's consent under such Lease)) executed

after the date hereof shall be subject to Lender's prior approval, which approval shall not be unreasonably withheld or delayed.

(c) Borrower shall (i) observe and perform the obligations imposed upon the lessor under the Leases in all material respects in a commercially reasonable manner, (ii) enforce 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; provided, however, Borrower shall not terminate or accept a surrender of a Major Lease without Lender's prior written approval, (iii) not collect any of the Rents more than 1 month in advance (other than security deposits), (iv) not execute any assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents), (v) not, without Lender's prior written approval, alter, modify or change any Lease so as to change the amount of or payment date for rent, change the expiration date, grant any option for additional space or term, materially reduce the obligations of the lessee or increase the obligations of lessor and (vi) hold all security deposits under all Leases in accordance with Applicable Law.

(d) Borrower shall notify Lender in writing, within 2 Business Days following receipt, of Borrower's receipt of any termination fee or payment ("**Lease Event Payment**") paid by any Tenant under any Lease in consideration of any termination, modification or amendment or settlement of any Lease or any release or discharge of any Tenant under any Lease from any obligation thereunder (a "**Lease Event**").

(e) Notwithstanding anything to the contrary contained herein, to the extent Lender's prior written approval is required for any leasing matters set forth in this Section 6.11, Lender shall have 15 Business Days from receipt of written request and all required information and documentation relating thereto in which to approve or disapprove such matter, provided that such written request to Lender is marked in bold lettering with the following language: "**LENDER'S RESPONSE IS REQUIRED WITHIN FIFTEEN (15) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THAT CERTAIN LOAN AGREEMENT BETWEEN THE UNDERSIGNED AND LENDER**" and the envelope containing the request must be marked "**PRIORITY**". In the event that Lender fails to respond to the leasing matter in question within such time, Lender's approval shall be deemed given for all purposes. Borrower shall provide Lender with such information and documentation as may be reasonably required by Lender, including, without limitation, lease comparables and other market information as reasonably requested by Lender. For purposes of clarification, Lender requesting additional and/or clarified information, in addition to approving or denying any request (in whole or in part), shall be deemed a response by Lender for purposes of the foregoing.

(f) Borrower shall pay all of Lender's reasonable out-of-pocket costs and expenses (including reasonable, actual attorneys' fees and disbursements) reasonably incurred in connection with any request for approval pursuant to this Section 6.11 regardless of whether Lender approves or disapproves such request.

Section 6.12 Management Agreement.

(a) Borrower shall (i) diligently perform, observe and enforce all of the terms, covenants and conditions of the Management Agreement to be performed, observed and enforced unimpaired and (ii) promptly notify Lender of any notice received by Borrower of any default by Borrower under the Management Agreement together with a true copy of each such notice. Without Lender's prior written consent, Borrower shall not, in any respect, surrender, consent to the assignment by Manager of its interest under, terminate or cancel or modify, change, supplement, alter or amend the Management Agreement. Any surrender, termination, cancellation, modification, change, supplement, alteration or amendment of the Management Agreement without prior consent shall be void and of no force and effect.

If Borrower defaults in the performance or observance of any material term, covenant or condition of the Management Agreement, then, without limiting the generality of the other provisions of this Agreement, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any appropriate action to perform or cure the same to the end that Borrower's rights in, to and under the Management Agreement shall be kept unimpaired and free from default. Lender and any Person designated by Lender are granted and shall have the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If Manager shall deliver to Lender a copy of any notice of default under the Management Agreement received by Borrower, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Borrower shall notify Lender if Manager sub-contracts to a third party or an affiliate any or all of its management responsibilities under the Management Agreement. Borrower shall, from time to time, use its best efforts to obtain from Manager estoppel certificates with respect to compliance by Borrower with the terms of the Management Agreement as may be requested by Lender. Borrower shall exercise each individual option, if any, to extend or renew the term of the Management Agreement upon demand by Lender at any time within 1 year of the last day upon which any such option may be exercised, and Borrower expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney is irrevocable and coupled with an interest. Any sums expended by Lender pursuant to this Section 6.12(a) shall bear interest at the Default Rate from the date incurred to the date of payment to Lender, constitute a portion of the Debt, be secured by the lien of the Security Instrument and the other Loan Documents and be immediately due and payable upon demand by Lender.

(b) Without limitation of the foregoing, if the Management Agreement is terminated pursuant to the Assignment of Management Agreement or for any other reason, then Lender, at its option, may require Borrower to engage, in accordance with the Assignment of Management Agreement, a new manager (the "New Manager") to manage the Property, which such New Manager shall be a Qualified Manager. New Manager shall be engaged by Borrower pursuant to a written management agreement that complies with the terms hereof and of the Assignment of Management Agreement and is otherwise satisfactory to Lender in all respects. New Manager and Borrower shall execute an assignment of management agreement in form and substance identical to the Assignment of Management Agreement. Without limitation of the foregoing, if required by Lender, Borrower shall, as a condition precedent to Borrower's engagement of such New Manager, obtain a Rating Agency Confirmation with respect to such New Manager and management agreement.

Section 6.13 Payment for Labor and Materials.

(a) Borrower will promptly pay when due all bills and costs for labor, materials and specifically fabricated materials incurred in connection with the Property (a "Work Charge") and never grant or permit to be created or exist any lien or security interest in the Property or any part thereof other than the liens or security interests created in favor of Lender under the Loan Documents and the Permitted Encumbrances, even though inferior to the liens and the security interests granted to Lender under the Loan Documents.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity of any Work Charge, the applicability of any Work Charge to Borrower or to the Property or any alleged non-payment of any Work Charge and defer paying the same, provided that (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall be permitted under and be conducted in accordance with all Applicable Law, as well as the provisions of any instrument to which Borrower is subject (and shall not constitute a default thereunder); (iii) neither the Property nor any part thereof or

interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) upon final determination thereof, Borrower shall promptly pay (or cause to be paid) any such contested Work Charge determined to be valid, applicable or unpaid; (v) such proceeding shall suspend the collection of such contested Work Charge from the Property or Borrower shall have paid the same (or shall have caused the same to be paid) under protest; and (vi) Borrower shall furnish (or cause to be furnished) such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure payment of such Work Charge, together with all interest and penalties payable in connection therewith. Lender may apply any such security or part thereof, as necessary to pay for such Work Charge at any time when, in Lender's judgment, the validity, applicability or non-payment of such Work Charge is finally established or the Property (or any part thereof or interest therein) shall be in present danger of being sold, forfeited, terminated, cancelled, lost, or the use or occupancy of the Property enjoined or otherwise required to be materially changed or limited.

Section 6.14 Performance of Other Agreements. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing the Debt and any amendments, modifications or changes thereto.

Section 6.15 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights hereunder or under the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower shall not maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan or any Welfare Plan or permit the assets of Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA

(c) Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan as requested by Lender in its reasonable discretion, that (i) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, or other retirement arrangement, which is subject to Title I of ERISA or Section 4975 of the IRS Code, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) the assets of Borrower do not constitute "plan assets" within the meaning of 29 C.F.R. §2510.3-101.

Section 6.16 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

Section 6.17 Alterations. Borrower may, without Lender's consent, perform alterations to any Improvements which (i) do not constitute a Material Alteration, (ii) do not adversely affect Borrower's financial condition or the value or net operating income of the Property, and (iii) are performed in the ordinary course of Borrower's business. Borrower shall not perform any Material Alteration without Lender's prior written consent (which consent shall not be unreasonably withheld or delayed). All alterations to any Improvements shall be made lien-free and in a good and workmanlike manner in accordance with all Applicable Laws.

Section 6.18 REA and Material Agreements Covenants. Borrower shall (a) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under any REA and the Material Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (b) promptly notify Lender of any material default under any REA or the Material Agreements of which it is aware; (c) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under any REA or the Material Agreements; (d) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed under any REA and the Material Agreements in a commercially reasonable manner; (e) cause the Property to be operated, in all material respects, in accordance with any REA and the Material Agreements; and (f) not, without the prior written consent of Lender, (i) enter into any new REA or Material Agreement or execute modifications to any existing REA or Material Agreements, (ii) surrender, terminate or cancel any REA or Material Agreement, (iii) reduce or consent to the reduction of the term of any REA or Material Agreement, (iv) increase or consent to the increase of the amount of any charges under any REA or Material Agreement, (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, any REA or Material Agreement in any material respect, or (vi) following the occurrence and during the continuance of an Event of Default, exercise any rights, make any decisions, grant any approvals or otherwise take any action under any REA or Material Agreement.

ARTICLE 7.

ENTITY COVENANTS

Section 7.1 Single Purpose Entity/Separateness. (a) Borrower has not and will not:

(i) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;

(ii) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the ownership, leasing, maintenance and operation of the Property;

(iii) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the Applicable Law of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

(v) own any subsidiary, or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person;

(vii) incur any Indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Prior Loan and the Debt and/or (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than 60 days past the date incurred and

paid on or prior to such date; provided, however, the aggregate amount of the indebtedness described in (B) shall not exceed at any time 2% of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or *pari passu*) by the Property;

(viii) fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Borrower's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, Borrower's assets may be included in a consolidated financial statement of its affiliates provided (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other Person and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has maintained and will maintain its books, records, resolutions and agreements as official records;

(ix) enter into any contract or agreement with any general partner, member, shareholder, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns (unless prohibited by Applicable Law from doing so);

(xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (to the extent there exists sufficient cash flow from the Property to do so after the payment of all operating expenses and Debt Service and shall not require any equity owner to make additional capital contributions to Borrower);

(xvi) without the unanimous written consent of all of its partners, members or shareholders, as applicable, (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors;

(xvii) fail to allocate shared expenses (including, without limitation, shared office space) or fail to use separate stationery, invoices and checks;

(xviii) fail to remain solvent, fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case to the extent there exists sufficient cash flow from the Property to do so); or

(xix) acquire obligations or securities of its partners, members, shareholders or other Affiliates, as applicable.

(b) Borrower hereby represents and warrants that (I) Borrower (i) is and has always been duly formed, validly existing and in good standing in the state of its incorporation and in all other jurisdictions where it is qualified to do business; (ii) has not had and does not have any judgments or liens of any nature against it (except for tax liens not yet due); (iii) has been and is in compliance with all Applicable Law and has received all permits necessary for it to operate its contemplated business; (iv) is not the subject of, or currently involved in any capacity in, any pending or threatened litigation; (v) is not, and has not been, involved in any dispute with any taxing authority; (vi) has paid all Taxes and Other Charges; (vii) has never owned any property other than the Property and has never engaged in any business except the ownership and operation of the Property; (viii) is not now and has not ever been a party to any lawsuit, arbitration, summons or legal proceeding; (ix) has not failed to provide Lender with complete financial statements that reflect a fair and accurate view of its financial condition; and (x) has no material contingent or actual obligations not related to the Property; and (II)(A) Prior Lender is the current holder of the Prior Loan, (B) the Prior Loan has been satisfied in full on or before the date hereof, (C) neither Borrower nor Guarantor have any remaining liabilities or obligations in connection with the Prior Loan (other than environmental and other limited and customary indemnity obligations), and (D) Prior Lender has released all collateral and security for the Prior Loan as of the date hereof.

Section 7.2 Change of Name, Identity or Structure. Borrower shall not change (or permit to be changed) Borrower's (a) name, (b) identity (including its trade name or names), (c) principal place of business set forth on the first page of this Agreement or (d) if not an individual, Borrower's corporate, partnership or other structure, without notifying Lender of such change in writing at least 30 days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining Lender's prior written consent. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At Lender's request, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 7.3 Business and Operations. Borrower will continue to engage in the businesses now conducted by it as and to the extent necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of the jurisdiction as and to the extent required for the ownership, maintenance, management and operation of the Property.

ARTICLE 8.

NO SALE OR ENCUMBRANCE

Section 8.1 No Sale/Encumbrance.

(a) Without Lender's prior written consent, Borrower shall not cause or permit (i) a Sale or Pledge of the Property or any part thereof or any legal or beneficial interest therein, (ii) a Sale or Pledge of an interest in any Restricted Party or (iii) any change in Control of Borrower, Guarantor or any Affiliated-Manager or any change in control of the day-to-day operations of the Property (collectively, a "Prohibited Transfer"); provided, however, (i) Leases of space in the Improvements complying with the provisions of Section 6.11, (ii) any Permitted Encumbrance and (iii) any Permitted Equipment Lease shall not constitute a Prohibited Transfer.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sales agreement for the sale of 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 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 (A) any Leases or any Rents or (B) any REA or Material Agreement; (iii) any action for partition of the Property (or any portion thereof or interest therein) or any similar action instituted or prosecuted by Borrower or by any other person or entity, pursuant to any contractual agreement or other instrument or under Applicable Law (including, without limitation, common law); (iv) any other action instituted by (or at the behest of) Borrower or its Affiliates or consented to or acquiesced in by Borrower or its Affiliates which results in a termination of any REA or Material Agreement; (v) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (vi) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (vii) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of any member or any profits or proceeds relating to such membership interest; (viii) 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 (ix) the removal or the resignation of Manager (including, without limitation, an Affiliated Manager) other than in accordance with Section 6.12.

(c) Borrower shall pay all of Lender's reasonable out-of-pocket costs and expenses (including a review fee and reasonable, actual attorneys' fees and disbursements) incurred in connection with any consent request pursuant to this Section 8.1 regardless of whether Lender consents or does not consent to such request.

Section 8.2 Permitted Equity Transfers.

(a) Notwithstanding the restrictions contained in this Article 8, the following equity transfers (but not the pledge) (each a "Permitted Equity Transfer") shall be permitted without Lender's consent (provided, however, each such Permitted Equity Transfer shall be conditioned upon Borrower's ability to, after giving effect to the applicable Permitted Equity Transfer, remake the representations contained herein relating to ERISA, OFAC and Patriot Act matters (and, upon Lender's request, Borrower shall deliver to Lender (x) an Officer's Certificate containing such updated representations effective as of the

date of the consummation of the applicable Permitted Equity Transfer and (y) searches, acceptable to Lender, for any Person owning, directly or indirectly, 20% or more of the interests in the Borrower as a result of such Permitted Equity Transfer)): (i) limited partnership interests and/or non-managing member interests in Borrower or in any general partner or member of Borrower shall be freely transferable without Lender's prior written consent so long as following such transfer, no more than 49% of the beneficial economic interest in Borrower (whether directly or indirectly) has been transferred in the aggregate and there is no change in Control of Borrower, Guarantor or any Affiliated Manager or any change in control of the day-to-day operations of the Property, (ii) any involuntary transfer caused by the death of Borrower or any general partner, shareholder, joint venturer, member or beneficial owner of a trust so long as Borrower is promptly reconstituted, if required, following such death and so long as there is no change in Control of Borrower, Guarantor or any Affiliated Manager or any change in control of the day-to-day operations of the Property unless any replacement management and/or controlling parties are approved by Lender and (iii) gifts for estate planning purposes of any individual's interests in Borrower or any general partner, shareholder, joint venturer or member to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant so long as Borrower is reconstituted, if required, following such gift and so long as there is no change in Control of Borrower, Guarantor or any Affiliated Manager or any change in control of the day-to-day operations of the Property unless any replacement management and/or controlling parties are approved by Lender.

(b) With respect to (i) any Permitted Equity Transfer in which more than 20% of the beneficial economic interest in Borrower (whether directly or indirectly) has been transferred and (ii) any Permitted Equity Transfer which results in a Person owning 20% or more of the beneficial economic interest in Borrower (whether directly or indirectly) who prior to such Permitted Equity Transfer did not own at least 20% of the beneficial economic interest in Borrower (whether directly or indirectly), Borrower shall deliver written notice to Lender of such Permitted Equity Transfer within 10 Business Days of such Permitted Equity Transfer.

Section 8.3 Permitted Property Transfers (Assumptions). Notwithstanding the foregoing provisions of this Article 8, Lender shall not unreasonably withhold consent to the one time transfer of the Property in its entirety to, and the related assumptions of the Loan by, any Person (a "Transferee") provided that, with respect to each such transfer, each of the following terms and conditions are satisfied (each, a "Permitted Property Transfer"):

- (a) no Default or Event of Default has occurred;
- (b) Borrower shall have delivered written notice to Lender of the terms of such prospective transfer not less than 60 days before the date on which such transfer is scheduled to close and, concurrently therewith, all such information concerning the proposed Transferee as Lender shall reasonably require. Lender shall have the right to approve or disapprove the proposed transfer based on its then current underwriting and credit requirements for similar loans secured by similar properties which loans are sold in the secondary market, such approval not to be unreasonably withheld. In determining whether to give or withhold its approval of the proposed transfer, Lender shall consider the experience and track record of Transferee and its principals in owning and operating facilities similar to the Property, the financial strength of Transferee and its principals, the general business standing of Transferee and its principals and Transferee's and its principals' relationships and experience with contractors, vendors, tenants, lenders and other business entities; provided, however, notwithstanding Lender's agreement to consider the foregoing factors in determining whether to give or withhold such approval, such approval shall be given or withheld based on what Lender determines to be commercially reasonable and, if given, may be given subject to such conditions as Lender may deem reasonably appropriate;

(c) Borrower shall have paid to Lender, concurrently with the closing of such prospective transfer, (i) a non-refundable assumption fee in an amount equal to the greater of (y) 1% of the then outstanding principal balance of the Loan or (z) \$15,000, (ii) all out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred by Lender in connection therewith and (iii) all fees, costs and expenses of all third parties and the Rating Agencies incurred in connection therewith. Lender may, as a condition of its review of Borrower's request for approval, require (and Borrower shall pay to Lender) an advance deposit as a condition to Lender's review, which deposit shall be applied against any such fees, costs and expenses so incurred by Lender, without regard to whether Borrower's request is approved or not, and without relieving Borrower of the obligation to pay any such fees, costs and expenses incurred in excess of that deposit;

(d) Transferee assumes and agrees to pay the Debt as and when due subject to the provisions of Article 3 and, prior to or concurrently with the closing of such transfer, Transferee and its constituent partners, members, shareholders, affiliates or sponsors as Lender may require, shall execute, without any cost or expense to Lender, such documents and agreements reasonably required by Lender to evidence and effectuate said assumption and an Affiliate of Transferee reasonably acceptable to Lender shall execute a recourse guaranty and an environmental indemnity in form and substance identical to the Guaranty and Environmental Indemnity, respectively, with such changes to each of the foregoing as may be reasonably required by Lender;

(e) Borrower and Transferee, without any cost to Lender, shall furnish any information requested by Lender for the preparation of, and shall authorize Lender to file, new financing statements and financing statement amendments and other documents to the fullest extent permitted by Applicable Law, and shall execute any additional documents reasonably requested by Lender;

(f) Borrower shall have delivered to Lender, at Borrower's cost and expense, such endorsements to Lender's Title Insurance Policy insuring that fee simple or leasehold title to the Property, as applicable, is vested in Transferee (subject to the Permitted Encumbrances), hazard insurance endorsements or certificates and other similar materials as Lender requires at the time of the transfer, all in form and substance satisfactory to Lender;

(g) Transferee shall have furnished to Lender all appropriate documents evidencing Transferee's organization and good standing, and the qualification of the signers to execute the assumption of the Debt, certified copies of all organizational and formation documents of Transferee and including any entities which are partners, members or shareholders of Transferee. Transferee shall comply with the covenants set forth in Article 7;

(h) Transferee shall assume Borrower's obligations under any Management Agreement or provide a new management agreement with a New Manager which meets with the requirements of the Assignment of Management Agreement and Section 6.12 and assign such new management agreement to Lender as additional security for the Debt and the Other Obligations;

(i) Transferee shall furnish to Lender an opinion of counsel satisfactory to Lender and its counsel (A) that Transferee's formation documents provide for the matters described in clause (g) above, (B) that the assumption of the Debt has been duly authorized, executed and delivered and that the assumption agreement and the other Loan Documents are valid, binding and enforceable against Transferee in accordance with their terms, (C) that Transferee and any entity which is a controlling stockholder, member or general partner of Transferee, have been duly organized, and are in existence and good standing, (D) that the transfer will not constitute a "significant modification" of the Loan under Section 1001 of the IRS Code or otherwise cause a tax to be imposed on a "prohibited transaction" by any REMIC Trust and (E) with respect to such other matters as Lender may reasonably request;

(j) if required by Lender, Lender shall have received a Rating Agency Confirmation with respect to such transfer;

(k) Transferee shall deposit with Lender such new or increased Reserve Funds as Lender may require and the Loan Documents shall be correspondingly amended to reflect any such changes in the Reserve Funds; and

(l) Borrower's obligations under the contract of sale pursuant to which the transfer is proposed to occur shall expressly be subject to the satisfaction of the applicable terms and conditions of this Section 8.3.

Notwithstanding the foregoing or anything herein to the contrary, Borrower may not exercise its rights pursuant to this Section 8.3 during the period commencing on the date that is 60 days prior to the date of any intended Securitization of the Loan and ending on the date that is 60 days after the date of such Securitization of the Loan.

ARTICLE 9.

INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 9.1 Insurance.

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

(i) insurance with respect to the Improvements and, if applicable, the Personal Property insuring against any peril now or hereafter included within the "Special" or "All Risks" Causes of Loss form (which shall not exclude fire, lightning, windstorm (including named storms), hail, explosion, riot, civil commotion, aircraft, vehicles and smoke), in each case (A) in an amount equal to 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 waiving of depreciation; (B) to be written on a no coinsurance form or containing an agreed amount endorsement with respect to the Improvements and, if applicable, the Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of \$25,000, excluding windstorm and earthquake insurance which may have a deductible of 5% of the total insurable value; (D) at all times insuring against at least those hazards that are commonly insured against under a "Special" or "All Risks" Causes of loss form of policy, as the same shall exist on the date hereof, and together with any increase in the scope of coverage provided under such form after the date hereof; and (E) providing Law & Ordinance coverage, including Coverage for Loss to the Undamaged Portion of the Building, Demolition Costs and Increased Cost of Construction in amounts acceptable to Lender. The Full Replacement Cost shall be re-determined from time to time (but not more frequently than once in any 12 calendar months) at the request of Lender by an appraiser or contractor designated and paid by Borrower and approved by Lender, or by an engineer or appraiser in the regular employ of the insurer. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Lender to request any such ascertainment shall relieve Borrower of any of its obligations under this Subsection;

(ii) commercial general liability insurance against all claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, including "Dram Shop" or other liquor liability coverage if Borrower sells or distributes alcoholic

beverages from the Property, such insurance (A) to be on the so-called "occurrence" form with a general aggregate limit of not less than \$2,000,000 and a per occurrence limit of not less than \$1,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) contractual liability for all insured contracts; and (5) contractual liability covering the indemnities contained in Articles 3 and 12 hereof to the extent the same is available;

(iii) loss of rents and/or business interruption insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in Sections 9.1(a)(i), (iv) and (vi) through (viii); and (C) in an amount equal to 100% of the projected gross income from the Property on an actual loss sustained basis for a period beginning on the date of Casualty and continuing until the Restoration of the Property is completed, or the expiration of 12 months, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; the amount of such business interruption/loss of rents insurance shall be determined prior to the Closing Date and at least once each year thereafter based on the greatest of: (x) Borrower's reasonable estimate of the gross income from the Property and (y) the highest gross income received during the term of the Loan for any full calendar year prior to the date the amount of such insurance is being determined, in each case for the succeeding 12 month period. All Net Proceeds payable to Lender pursuant to this Subsection (the "**Rent Loss Proceeds**") shall be held by Lender in an Eligible Account (which shall be deemed to be included within the definition of the "**Accounts**" hereunder) and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that (I) nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually paid out of the Rent Loss Proceeds and (II) in the event the Rent Loss Proceeds are paid in a lump sum in advance and Borrower is entitled to disbursement of such Rent Loss Proceeds in accordance with the terms hereof, Lender or Servicer shall hold such Rent Loss Proceeds in a segregated interest-bearing Eligible Account and Lender or Servicer shall estimate the number of months required for Borrower to restore the damage caused by the applicable Casualty, shall divide the applicable aggregate Rent Loss Proceeds by such number of months and shall disburse such monthly installment of Rent Loss Proceeds from such Eligible Account to Borrower after Lender's deduction therefrom of the amount of Debt Service and deposits into the Reserve Funds then due and payable hereunder;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements and only if the current property and liability coverage forms do not otherwise apply (A) commercial general liability and umbrella liability insurance covering claims related to the construction, repairs or alterations being made at the Property which are not covered by or under the terms or provisions of the commercial general liability and umbrella liability insurance policies required herein; and (B) the insurance provided for in Section 9.1(a)(i) 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 Sections 9.1(a)(i), (iv) and (vi) through (viii), as applicable, (3) including permission to occupy the Property, and (4) written on a no coinsurance form or containing an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease aggregate in respect of any

work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) equipment breakdown/boiler and machinery insurance covering all mechanical and electrical equipment in such amounts as shall be reasonably be required by Lender, on terms and in amounts consistent with the commercial property insurance policy required under Section 9.1(a)(i) above or in such other amount as shall be reasonably required by Lender (if applicable to the Property);

(vii) if any portion of the Improvements is at any time located in an area identified in the Federal Register by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to 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, or any successor law (the "**Flood Insurance Acts**"), flood hazard insurance in an amount equal to "Full Replacement Cost", which shall include, without limitation, the maximum limit of coverage available for the Property under the Flood Insurance Acts; provided, that, the insurance provided pursuant to this clause (vii) shall be on terms consistent with the "All Risk" insurance policy required in Section 9.1(a)(i) above;

(viii) Intentionally omitted;

(ix) umbrella liability insurance in an amount not less than \$5,000,000 per occurrence on terms consistent with the commercial general liability insurance policy required under Subsection (ii) above;

(x) insurance against employee dishonesty in amounts acceptable to Lender (if applicable to the Property and Borrower);

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

(xii) such other insurance and in such amounts as Lender 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 Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 9.1(a) shall be obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**"), in such forms and, from time to time after the date hereof, in such amounts as may be satisfactory to Lender, issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and approved by Lender. The insurance companies must have a financial strength rating of "A" or better and a financial size category of "VIII" or better by A.M. Best Company, Inc., or a rating of (i) "A-" or better by S&P, and (ii) if Moody's rates the insurance company and is designated by Lender in connection with the Securitization, "A3" or better by Moody's (each such insurer shall be referred to below as a "**Qualified Insurer**"). Not less than 15 days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Section 9.1(a), Borrower shall deliver carrier-issued binders and certificates of the renewal Policies, and thereafter, complete copies of the Policies when issued. Upon renewal of the Policies, Borrower shall deliver evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**").

(c) Except to the extent required pursuant to Section 9.1(a), Borrower shall not obtain (or permit to be obtained) (i) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Lender and Lender's interest is included therein as provided in this Agreement and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Section 9.1(a) to be furnished by, or which may be reasonably required to be furnished by, Borrower. In the event Borrower obtains (or causes to be obtained) separate insurance or an umbrella or a blanket Policy, Borrower shall notify Lender of the same and shall cause complete copies of each Policy to be delivered as required in Section 9.1(a). Any umbrella or blanket Policy remains subject to review and approval by Lender based on the schedule of locations and values. Notwithstanding Lender's approval of any umbrella or blanket liability or casualty Policy hereunder, Lender reserves the right, in its sole discretion, to require Borrower to obtain a separate Policy in compliance with this Section 9.1.

(d) All Policies of insurance provided for or contemplated by Section 9.1(a) shall name Borrower as the insured and, in the case of liability policies, except for the Policies referenced in Sections 9.1(a)(v) and (xi), shall name Lender as additional insured, as their respective interests may appear, and in the case of property coverages, including but not limited to the all-risk/special form coverage, rent loss, business interruption, terrorism, boiler and machinery, earthquake and flood insurance, shall name Lender as mortgagee/lender's loss payable by a standard noncontributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All property Policies of insurance provided for in Section 9.1(a) shall provide that:

(i) no (A) act, failure to act, violation of warranties, declarations or conditions, or negligence by Borrower, or anyone acting for Borrower, or by any Tenant under any Lease or other occupant, (B) occupancy or use of the Property for purposes more hazardous than those permitted, (C) foreclosure or similar action by Lender, or (D) failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be cancelled without at least 30 days' written notice to Lender;

(iii) each Policy shall provide that (A) the issuers thereof shall give written notice to Lender if the Policy has not been renewed 10 days prior to its expiration and (B) Lender is permitted to make payments to effect the continuation of such Policy upon notice of cancellation due to non-payment of Insurance Premiums; and

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

Additionally, Borrower further covenants and agrees to promptly send to Lender any notices of non-renewal or cancellation it receives from the insurer with respect to the Policies required pursuant to Section 9.1.

(f) Borrower shall furnish to Lender, on or before 30 days after the close of each of Borrower's fiscal years, a statement certified by Borrower or a Responsible Officer of Borrower of the amounts of insurance maintained in compliance herewith, of the risks covered by such insurance and of the insurance company or companies which carry such insurance and, if requested by Lender, verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender.

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

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

(i) As an alternative to the Policies required to be maintained pursuant to the preceding provisions of this Section 9.1, Borrower will not be in default under this Section 9.1 if Borrower maintains (or causes to be maintained) Policies which (i) have coverages, deductibles and/or other related provisions other than those specified above and/or (ii) are provided by insurance companies not meeting the credit ratings requirements set forth above (any such Policy, a "**Non-Conforming Policy**"), provided, that, prior to obtaining such Non-Conforming Policies (or permitting such Non-Conforming Policies to be obtained), Borrower shall have (1) received Lender's prior written consent thereto and (2) if required by Lender, confirmed that Lender has received a Rating Agency confirmation with respect to any such Non-Conforming Policy.

(j) The property, loss of rents/business interruption, general liability and umbrella liability insurance policies required in this Section 9.1 shall not exclude Terrorism Coverage (defined below) (such insurance policies, the "**Applicable Policies**"). Such Terrorism Coverage shall comply with each of the applicable requirements for Policies set forth above (including, without limitation, those relating to deductibles); provided, that, Lender, at Lender's option, may reasonably require Borrower to obtain or cause to be obtained the Terrorism Coverage with higher deductibles than set forth above. As used above, "**Terrorism Coverage**" shall mean insurance for acts of terror or similar acts of sabotage; provided that, for so long as the Terrorism Risk Insurance Act of 2002, as extended and modified by the Terrorism Risk Insurance Program Authorization Act of 2007 (as the same may be further modified, amended, or extended, "**TRIPRA**") (i) remains in full force and effect and (ii) continues to cover both foreign and domestic acts of terror, the provisions of TRIPRA shall determine what is deemed to be included within this definition of "**Terrorism Coverage**."

Section 9.2 Casualty. If the Property shall be damaged or destroyed, in whole or in part, by a Casualty, Borrower shall give prompt notice to Lender and shall promptly commence and diligently prosecute the completion of a Restoration in accordance with Section 9.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower.

Section 9.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding for the Condemnation of the Property of which Borrower has knowledge and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including but not

limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Agreement and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property in accordance with Section 9.4. If the Property is sold, through foreclosure or otherwise, prior to Lender's receipt of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt.

Section 9.4 Restoration. The following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds shall be less than the Restoration Threshold and the costs of completing the Restoration shall be less than the Restoration Threshold, the Net Proceeds will be disbursed by Lender to Borrower upon receipt provided that all of the conditions set forth in Section 9.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration are equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Section 9.4.

(i) The Net Proceeds shall be made available 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 30% of each of (i) the fair market value of the Property as reasonably determined by Lender, and (ii) the rentable area of the Property has been damaged, destroyed or rendered unusable as a result of a Casualty or (2) in the event the Net Proceeds are condemnation proceeds, less than 10% of each of (i) the fair market value of the Property as reasonably determined by Lender and (ii) the rentable area of the Property is taken, such land is located along the perimeter or periphery of the Property, no portion of the Improvements is located on such land and such taking does not materially impair the existing access to the Property;

(C) Leases demising in the aggregate a percentage amount equal to or greater than 75% of the total rentable space in the Property, which has been demised under executed and delivered Leases in effect as of the date of the occurrence of a Casualty or Condemnation, 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 furnishes to Lender evidence satisfactory to Lender that all Tenants under Major Leases shall continue to operate their respective space at the Property after the completion of the Restoration;

- (D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than 30 days after the issuance of a building permit with respect thereto) and shall diligently pursue the same to satisfactory completion in compliance with any REA, the Material Agreements and all Applicable Laws, including, without limitation, all applicable Environmental Laws;
- (E) Lender shall be satisfied that any operating deficits which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking will be covered out of (1) the insurance coverage referred to in Section 9.1(a)(iii) or (2) by other funds of Borrower;
- (F) Lender shall be satisfied that, upon the completion of the Restoration, the fair market value and cash flow of the Property will not be less than the fair market value and cash flow of the Property as the same existed immediately prior to the applicable Casualty or Condemnation;
- (G) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (1) 6 months prior to the Maturity Date, (2) the expiration of the insurance coverage referred to in Section 9.1(a)(iii), (3) such time as may be required under applicable zoning law, ordinance, rule or regulation in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or Condemnation (including, without limitation, in order to preserve any legal non-conformity of the Property or the Improvements that existed and was permitted under Applicable Law immediately prior to such Casualty or Condemnation) or (4) the earliest date required for such completion under the terms of any REA or the Material Agreements;
- (H) the Property and the use thereof after the Restoration will be in compliance with and permitted under any REA, the Material Agreements and all Applicable Law; and
- (I) with respect to any Condemnation, Lender shall be satisfied in its sole discretion that making the Net Proceeds available for Restoration shall be permitted pursuant to REMIC Requirements.

(ii) The Net Proceeds shall be held by Lender and, until disbursed in accordance with the provisions of this Section 9.4(b), shall constitute additional security for the Debt and Other Obligations. The Net Proceeds (other than the Rent Loss Proceeds) shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the related Restoration item have been paid for in full and (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 Property which have not either been fully bonded to Lender's satisfaction and discharged of record or in the alternative fully insured to Lender's satisfaction 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 Lender and by an independent consulting engineer selected by Lender (the "Casualty Consultant"). All such plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration shall

be assigned to Lender as additional collateral for the Loan and Lender shall have use of the same. The identity of the contractors, subcontractors and materialmen engaged in the Restoration shall be subject to prior review and acceptance by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower. Borrower shall have the right to settle all claims under the Policies jointly with Lender, provided that (a) no Event of Default exists, (b) Borrower promptly and with commercially reasonable diligence negotiates a settlement of any such claims and (c) the insurer with respect to the Policy under which such claim is brought has not raised any act of the insured as a defense to the payment of such claim. If an Event of Default exists, Lender shall, at its election, have the exclusive right to settle or adjust any claims made under the Policies in the event of a Casualty.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Restoration Retainage. The term "**Restoration Retainage**" as used in this Section 9.4(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that Net Proceeds representing 50% of the required Restoration have been disbursed. There shall be no Restoration Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Restoration Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 9.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Restoration Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 9.4(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Restoration Retainage; provided, however, Lender will release the portion of the Restoration Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of the Security Instrument. If required by Lender, the release of any such portion of the Restoration Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in Lender's reasonable opinion 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 Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency shall be held by Lender and 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 9.4(b) shall constitute additional security for the Debt and Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 9.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(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 9.4(b)(vii) shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper. If Lender shall receive and retain Net Proceeds, the lien of the Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

(d) Notwithstanding the foregoing provisions of this Section 9.4, if the Loan is included in a REMIC Trust and, immediately following a release of any portion of the real property relating to the Property following a Casualty or Condemnation, the ratio of the unpaid principal balance of the Loan to the value of the remaining real property relating to the Property is greater than 125% (such value to be determined, in Lender's sole discretion, by any commercially reasonable method permitted to a REMIC Trust), the principal balance of the Loan must be paid down by Borrower by an amount sufficient to satisfy REMIC Requirements, unless the Lender receives an opinion of counsel that the Loan will not fail to maintain its status as a "qualified mortgage" within the meaning of Section 860G(a)(3)(A) of the IRS Code as a result of the related release of lien.

ARTICLE 10.

EVENTS OF DEFAULT; REMEDIES

Section 10.1 Event of Default.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

(a) if Borrower shall fail to (i) pay when due (A) any sums which by the express terms of this Agreement and the other Loan Documents require immediate or prompt payment without any grace period or (B) sums which are payable on the Maturity Date, or (ii) pay within 5 days when due (A) any monthly Debt Service and any amount required to be paid into the Reserve Funds or (B) any other sums payable under the Note, this Agreement or any of the other Loan Documents;

(b) if any of the Taxes or Other Charges are not paid when due and payable, except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Agreement and Lender's access to such sums is not restricted or constrained in any manner;

(c) if the Policies are not kept in full force and effect or if evidence thereof is not delivered to Lender as provided in Section 9.1;

(d) if any of the representations or covenants contained in Article 7 are breached or violated;

(e) a Sale or Pledge occurs that is not a Permitted Transfer;

(f) if any representation or warranty of, or with respect to, Borrower, Guarantor or any member, general partner, principal or beneficial owner of any of the foregoing, made herein, in the Guaranty or in the Environmental Indemnity or in any other guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material adverse respect when made;

(g) if (i) Borrower or Guarantor shall commence any case, proceeding or other action (A) under any Creditors Rights Laws seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, liquidation or dissolution or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Borrower or any managing member or general partner of Borrower or Guarantor shall make a general assignment for the benefit of its creditors; (ii) there shall be commenced against Borrower or any managing member or general partner of Borrower or Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; (iii) there shall be commenced against Borrower or Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which is not vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; (iv) Borrower or Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(h) if Borrower is in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to the Security Instrument;

(i) subject to Borrower's right to contest pursuant to Sections 6.5(b) and 6.13(b), if the Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for any Taxes not then due and payable) and remains undischarged of record (by payment, bonding or otherwise) for a period of 30 days;

(j) if any federal tax lien is filed against Borrower, Guarantor or the Property and same is not discharged of record (by payment, bonding or otherwise) within 30 days after being filed;

(k) if Borrower shall fail to comply with the covenants in Article 14;

(l) if any default occurs under any guaranty or indemnity executed in connection herewith (including, without limitation, the Environmental Indemnity and/or the Guaranty) and such default continues after the expiration of applicable grace periods, if any;

(m) if Borrower shall fail to deliver any required Financial Item to Lender within 30 days after Lender's request;

(n) if Borrower defaults under the Management Agreement beyond the expiration of applicable notice and grace periods, if any, or if the Management Agreement is canceled, terminated or surrendered or expires pursuant to its terms, unless Borrower enters into a new management agreement with a Qualified Manager in accordance with the applicable terms and provisions hereof;

(o) if any representation and/or covenant herein relating to ERISA matters is breached;

(p) if (i) Borrower shall fail (beyond any applicable notice or grace period) to pay any charges payable under any REA or Material Agreements as and when payable thereunder, (ii) Borrower defaults under any REA or Material Agreements beyond the expiration of applicable notice and grace periods, if any, thereunder, (iii) any REA or Material Agreements are amended, supplemented, replaced, restated or otherwise modified without Lender's prior written consent or if Borrower consents to a transfer of any party's interest thereunder without Lender's prior written consent, or (iv) any REA or Material Agreements and/or the estate created thereunder is canceled, rejected, terminated, surrendered or expires pursuant to its terms; unless in such case Borrower enters into a replacement thereof in accordance with the applicable terms and provisions hereof;

(q) the death or incompetency of a Guarantor who is a natural person (subject to the provisions of the Guaranty with respect to a Satisfactory Replacement Guarantor);

(r) if Borrower continues in default under any term, covenant or condition of this Agreement not specified in Subsections (a) through (q) above or not otherwise specifically designated as an Event of Default herein, (i) for more than 10 days after notice from Lender, in the case of any default which can be cured by the payment of a sum of money or (ii) for 30 days after notice from Lender, in the case of any other default (an "**Other Non-Monetary Default**"), provided that if, despite the fact that Borrower has promptly commenced diligent efforts to cure such Other Non-Monetary Default within such 30 day period, it cannot reasonably be cured within such initial 30 day period and if Borrower thereafter diligently and expeditiously proceeds to cure such Other Non-Monetary Default, the initial 30 day period shall be extended for so long as reasonably necessary (but not beyond an additional 60 days) to permit Borrower to cure such Other Non-Monetary Default with due diligence (subject to further extension by Lender, in Lender's sole discretion); and/or

(s) if a default exists under any of the other Loan Documents beyond any applicable cure periods, whether as to Borrower or the Property, or if any other such event shall occur or condition shall exist, if the effect thereof is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

Section 10.2 Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 10.1(g) with respect to Borrower only) and at any time thereafter Lender may, in addition to any other rights or remedies available to it pursuant to the Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity. Upon any Event of Default described in Section 10.1(g) (with respect to Borrower only), the Debt and all other obligations of Borrower under the 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 the other Loan Documents to the contrary notwithstanding.

(b) Upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under the Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be

declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by Applicable Law, without impairing or otherwise affecting Lender's other rights and remedies permitted by Applicable Law, equity or contract or as set forth herein or in the other Loan Documents. 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.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, security instruments and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after Lender's request, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until 3 days after Lender has given Borrower notice of Lender's intent to exercise its rights under such power. Borrower shall not 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.

(e) Any amounts recovered from the Property or any other collateral for the Loan after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or being deemed to have cured any Event of Default, make, do or perform any obligation of Borrower hereunder in such manner and to

such extent as Lender may deem necessary. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property for such purposes, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by Applicable Law), with interest as provided in this Section, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate, for the period after such cost or expense was incurred through and including the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by the liens, claims and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

ARTICLE 11.

SECONDARY MARKET

Section 11.1 Securitization.

(a) Lender shall have the right (i) to sell or otherwise transfer the Loan or any portion thereof as a whole loan, (ii) to sell participation interests in the Loan or (iii) to securitize the Loan or any portion thereof in a single asset securitization or a pooled loan securitization. The transaction referred to in clauses (i), (ii) and (iii) above shall hereinafter be referred to collectively as "**Secondary Market Transactions**" and the transactions referred to in clause (iii) shall hereinafter be referred to as a "**Securitization**". Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**".

(b) If requested by Lender, Borrower shall assist, at Borrower's cost and expense, Lender in satisfying the market standards to which Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with any Secondary Market Transactions. In addition, Lender expects that Borrower shall promptly furnish (or cause to be furnished) to Lender upon request any and all financial or other statements and (if applicable) related accountants' reports and consents as Lender determines to be necessary or appropriate for compliance with Regulation AB or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act Filing or as shall otherwise be reasonably requested by Lender. If requested by Lender, Borrower shall furnish to Lender financial data and/or financial statements for any Tenant of the Property if, in connection with a Securitization, Lender expects there to be, with respect to such Tenant or group of affiliated Tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in the Securitization such that such Tenant or group of affiliated Tenants would constitute a Significant Obligor.

(c) If requested by Lender, Borrower shall promptly (i) provide Lender with any documents (including, but not limited to, other or additional financial statements, or financial, statistical or operating information) as Lender shall determine is required pursuant to or in order to adopt, implement, incorporate, comply with or opt-out of the provisions of Regulation AB, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any enabling legislation enacted in connection therewith ("**Dodd Frank**"), Rule 17g-5 promulgated under the Exchange Act ("**17g-5**") or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document, any Exchange Act Filing, any regulatory requirement or as shall otherwise be reasonably requested by Lender; and (ii) execute such amendments to the Loan Documents and/or Borrower's organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies

or otherwise determined by Lender to be required to adopt, implement, incorporate, comply with or opt-out of the provisions of Regulation AB, Dodd Frank, 17g-5 or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document, any Exchange Act Filing, any regulatory requirement or as shall otherwise be reasonably requested by Lender or specifically required by law.

Section 11.2 Securitization Indemnification.

(a) Borrower understands that information provided to Lender by Borrower and its agents, counsel and representatives may be included in disclosure documents in connection with the Securitization, including, without limitation, an offering circular, a prospectus, prospectus supplement, private placement memorandum or other offering document (each, a "**Disclosure Document**") and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), and may be made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization.

(b) In connection with the Disclosure Documents, Securities Act Filings and Exchange Act Filings, Borrower shall (i) indemnify Lender (and for purposes of this Section 11.2, Lender hereunder shall include its officers and directors), the affiliate of Wells Fargo that has filed the registration statement relating to the Securitization (the "**Registration Statement**"), each of its directors, each of its officers who have signed the Registration Statement and each Person that controls any such affiliate within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Wells Group**"), and Wells Fargo, and any other placement agent or underwriter with respect to the Securitization, each of their respective directors and each Person who controls Wells Fargo or any other placement agent or underwriter within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the "**Underwriter Group**") for any losses, claims, damages or liabilities (collectively, the "**Liabilities**") to which Lender, the Wells Group or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Disclosure Document a material fact required to be stated in the Disclosure Document in order to make the statements in the Disclosure Document, in light of the circumstances under which they were made, not misleading and (ii) reimburse Lender, the Wells Group or the Underwriter Group for any legal or other expenses reasonably incurred by Lender, the Wells Group or the Underwriter Group in connection with defending or investigating the Liabilities; provided, however, such indemnity shall be limited to information furnished to Lender by or on behalf of Borrower in connection with the preparation of the Disclosure Document or in connection with the underwriting or closing of the Loan (collectively, the "**Provided Information**") and shall only be effective to the extent that Lender accurately states the Provided Information in the applicable Disclosure Document.

(c) Borrower shall jointly and severally indemnify Lender and its officers, directors, partners, employees, representatives, agents and affiliates against any Liabilities to which Lender or its officers, directors, partners, employees, representatives, agents and affiliates, may become subject in connection with any indemnification to the Rating Agencies in connection with issuing, monitoring or maintaining the Securities insofar as the Liabilities arise out of or are based upon any untrue statement of any material fact in any information provided by or on behalf of Borrower to the Rating Agencies (the "**Covered Rating Agency Information**") or arise out of or are based upon the omission to state a material fact in the Covered Rating Agency Information required to be stated therein or necessary in order to make the statements in the Covered Rating Agency Information, in light of the circumstances under which they were made, not misleading.

(d) Borrower's liabilities and obligations under this Section 11.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

Section 11.3 Rating Agency Costs. In connection with any Rating Agency Confirmation or other Rating Agency consent, approval or review required hereunder (other than the initial review of the Loan by the Rating Agencies in connection with a Securitization), Borrower shall pay all of the costs and expenses of Lender, Servicer and each Rating Agency in connection therewith, and, if applicable, shall pay any fees imposed by any Rating Agency in connection therewith.

ARTICLE 12.

INDEMNIFICATIONS

Section 12.1 General Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all actual Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Applicable Law; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (f) the payment of any commission, charge or brokerage fee to anyone (other than a broker or other agent retained by Lender) which may be payable in connection with the funding of the Loan evidenced by the Note and secured by the Security Instrument; and/or (g) the holding or investing of the funds on deposit in the Accounts or the performance of any work or the disbursement of funds in each case in connection with the Accounts. Any amounts payable to Indemnified Parties by reason of the application of this Section 12.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Indemnified Parties until paid.

Section 12.2 Mortgage and Intangible Tax and Transfer Tax Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to (a) any tax on the making and/or recording of the Security Instrument, the Note or any of the other Loan Documents (whether due upon the making of same or upon the exercise of its remedies under the Loan Documents), and (b) any transfer tax incurred by Indemnified Parties in connection with the exercise of remedies or under any of the Loan Documents.

Section 12.3 ERISA Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Indemnified Parties may incur, directly or indirectly, as a result of a default under Sections 5.6 or 6.15.

Section 12.4 Duty to Defend, Legal Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 12.5 Survival. Borrower's obligations and liabilities under this Article 12 shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Security Instrument.

Section 12.6 Environmental Indemnity. Simultaneously herewith, Borrower and Guarantor have executed and delivered the Environmental Indemnity to Lender, which Environmental Indemnity is not secured by the Security Instrument.

ARTICLE 13.

NOTICES

Section 13.1 Notices. All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (b) 1 Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) 3 Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:	Ohio Commons LLC 351 W. Chicago Avenue Chicago, Illinois 60645 Attention: Erik Larson Facsimile No.: (312) 506-3278
With a copy to:	Brotschul Potts LLC 203 W. Monroe, Suite 230 Chicago, Illinois 60606 Attention: Matthew B. Brotschul, Esq. Facsimile No.: (312) 277-3278
If to Lender:	Wells Fargo Bank, National Association 1901 Harrison Street, 2nd Floor MAC A0227-020 Oakland, California 94612 Attention: Commercial Mortgage Servicing Facsimile No.: (866) 359-5352

With a copy to:

Winstead PC
201 North Tryon Street, Suite 2000
Charlotte, North Carolina 28202
Attention: David Iacuzio, Esq.
Facsimile No.: (704) 339-1701

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

ARTICLE 14.

FURTHER ASSURANCES

Section 14.1 Further Acts, etc. Borrower will, at Borrower's cost, and without expense to Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged and encumbered or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording the Security Instrument, or for complying with all Applicable Law. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively Lender's security interest in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 14.1.

Section 14.2 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the Closing Date which deducts the Debt from the value of the Property for the purpose of taxation and which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than 90 days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of the Security Instrument or the Debt. If such claim, credit or deduction shall be required by Applicable Law, Lender shall have the option, by written notice of not less than 90 days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to any of the Loan Documents or impose any other tax or charge thereon, Borrower will pay the same, including any interest and penalties thereon.

ARTICLE 15.

WAIVERS

Section 15.1 Modification, Waiver in Writing.

No modification, amendment, extension, discharge, termination or waiver of any provision of the Loan Documents, 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 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 15.2 Delay Not a Waiver.

Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege under any of the Loan Documents, 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 the Loan Documents, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under the Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 15.3 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER, BY ACCEPTANCE OF THIS AGREEMENT, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

Section 15.4 Waiver of Notice.

Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Agreement specifically and expressly provides for the giving of notice by Lender to Borrower and (b) with respect to matters for which Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 15.5 Remedies of Borrower.

In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by Applicable Law or under any of the Loan Documents; Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties agree that any action or proceeding to determine whether Lender has

acted reasonably shall be determined by an action seeking declaratory judgment. Lender agrees that, in such event, it shall cooperate in expediting any action seeking injunctive relief or declaratory judgment.

Section 15.6 Marshalling and Other Matters.

Borrower hereby waives, to the extent permitted by Applicable Law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale under the Security Instrument of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of the Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of the Security Instrument and on behalf of all Persons to the extent permitted by Applicable Law.

Section 15.7 Waiver of Statute of Limitations.

To the extent permitted by Applicable Law, Borrower expressly waives and releases to the fullest extent permitted by Applicable Law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its obligations under the Loan Documents.

Section 15.8 Waiver of Counterclaim. Borrower waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 15.9 Sole Discretion of Lender. Wherever pursuant to this Agreement (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in Lender's sole discretion, except as may be otherwise expressly and specifically provided herein. Prior to the Securitization, whenever pursuant to this Agreement or any other Loan Document the Rating Agencies are given any right to approve or disapprove any matter, or any arrangement or term is to be satisfactory to the Rating Agencies, to the extent not already required, the decision of Lender to approve or disapprove such matter or to decide whether arrangements or terms are satisfactory or not satisfactory, shall be substituted therefor.

ARTICLE 16.

MISCELLANEOUS

Section 16.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth in any of the Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 16.2 Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the Applicable Laws of the State and Applicable Laws of the United States of America.

Section 16.3 Headings. The Article and/or Section headings 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 16.4 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 16.5 Expenses. Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender within 10 Business Days of receipt of written notice from Lender for all reasonable, out-of-pocket costs and expenses (including reasonable, actual attorneys' fees and disbursements) reasonably incurred by Lender in accordance with this Agreement in connection with (i) the preparation, negotiation, execution and delivery of the Loan Documents and the consummation of the transactions contemplated hereby; (ii) the administration of the Loan Documents for the term of the Loan and any modifications and amendments, if any, of any of the other Loan Documents; (iii) the processing of any Borrower requests made under any of the Loan Documents; (iv) the enforcement of any remedies under the Loan Documents or Lender's satisfaction of any of Borrower's or Guarantor's obligations under the Loan Documents (v) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, the Loan Documents, the Property or any other security given for the Loan; and (vi) otherwise protecting Lender's interests under any Loan Document, including, without limitation, in connection with any "work-out" of the Loan or any bankruptcy, insolvency, receivership, reorganization, rehabilitation, liquidation or other similar proceeding in respect of Borrower or Guarantor or an assignment by Borrower or Guarantor for the benefit of its creditors; provided, however, Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of gross negligence, illegal acts, fraud or willful misconduct of Lender. Borrower also acknowledges and agrees that formal written appraisals of the Property by a licensed independent appraiser may be required by Lender's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that Lender may, at its option, require inspection of the Property by an independent supervising architect and/or cost engineering specialist at least semiannually. Notwithstanding the foregoing, Borrower shall not be required to pay for more than two appraisals during the term of the Loan unless an Event of Default has occurred and is continuing, such appraisal is obtained in connection with a Casualty or Condemnation or as otherwise required by law. In addition, if Borrower is undertaking a Restoration or is performing any work at the Property that requires the obtaining of a building permit, then Borrower shall pay the reasonable out-of-pocket costs of architects, engineers and other consultants retained by Lender to review the performance of such Restoration or work. Any amounts payable to Lender pursuant to this Section shall become immediately due and payable upon written demand and, if the same is not paid within 10 Business Days from such written demand, shall bear interest at the Default Rate from the date which is 10 Business Days from such written demand until the date such amounts have been paid.

Section 16.6 Cost of Enforcement. In the event (a) that the Security Instrument is foreclosed in whole or in part, (b) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors or (c) Lender exercises any of its other remedies under the Loan Documents, Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post judgment action involved therein, together with all required service or use taxes. Any amounts payable to Lender pursuant to this Section shall become

immediately due and payable upon written demand and, if the same is not paid within 5 Business Days from such written demand, shall bear interest at the Default Rate from the date which is 5 Business Days from such written demand until the date such amounts have been paid.

Section 16.7 Offsets, Counterclaims and Defenses. Any assignee of Lender's interest in and to the 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 16.8 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created under the Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender or to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) The Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in the Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein.

Section 16.9 Conflict. In the event of any conflict between the provisions of this Agreement and the other Loan Documents, the provisions of this Agreement shall control.

Section 16.10 Entire Agreement. The Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Lender are superseded by the terms of the Loan Documents.

Section 16.11 Liability. If Borrower consists of more than one Person, the obligations and liabilities of each such Person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 16.12 Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

[NO FURTHER TEXT ON THIS PAGE]

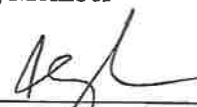
IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

OHIO COMMONS LLC, an Illinois limited liability company

By: Cedar Street Capital Partners LLC,
a Delaware limited liability company,
its Managing Member

By:


Name: Alex Samoylovich
Title: Manager

LENDER:

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: *Alicia Fritz*
Name: Alicia C. Fritz
Title: Vice President

SCHEDULE I

IMMEDIATE REPAIRS

1. On or before the date that is six (6) months after the date of this Agreement (or such later date as Lender may approve in its sole discretion), Borrower shall provide Lender with satisfactory evidence that each of the following existing building code violations and/or zoning code violations have been deemed fully remedied and formally closed by the City of Chicago Department of Buildings:

[See attached list of violations]

Open Violations for 5001 - 5001 S DREXEL AVE

Address	App.Type	Insp.Type	Viol. Date	Violation Description
909 E 50TH ST	BLDG_PERM	CN_ANNUAL	01/15/2008	CN190019: ARRANGE PREMISE INSPECTION
Arrange for inspection of premises. (13-12-100)				
NO ENTRY 5001-05 & 909-911, for annual inspection.				
911 E/ Unit 208 - no response, unable to verify complaint of bathroom wall leaks and mice infestation.				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	CN196029: POST OWNER/MANAGERS NAME/#
Post name, address, and telephone of owner, owner's agent for managing, controlling or collecting rents, and any other person managing or controlling building conspicuously where accessible or visible to public way. (13-12-030)				
OWNER'S I.D.SIGN NOT POSTED				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	EL0084: *****TEXT*****
EAST EXTERIOR ALLEY SIDE PROTECTION PROVIDE SUITABLE PROTECTION FOR SERVICE RISERS (18-27-230.50(C))				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	EL0012: SEPARATE CIRCUIT FOR APPLIANCE
Install separate circuit to permanent appliance rated over 50% of supplying branch circuit. (18-27-210.23)				
UNIT #208 FURNACE DOES NOT HAVE IT'S OWN CIRCUIT REQUIRED IF EQUIPMENT IS RATED OVER 50% OF SUPPLYING BRANCH CIRCUIT				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	CN106015: REPAIR INTERIOR STAIR SYSTEM
Failed to maintain interior stairway system in safe condition and sound repair. (13-196-570)				
INTERIOR STAIRWAY MISSING PICKETS FROM 1-3PM				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	CN076044: REPAIR DOWNSPOUT
Failed to maintain roof downspouts in good repair and working condition. (13-196-590, 13-196-630(b), 13-196-641, 18-29-1101, 18-29-1105, 18-29-1106)				
NORTH ELEVATION DOWN SPOUT MISSING SECTION				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	EL0019: DEFECTIVE FIXTURES
Replace defective light fixture. (18-27-410.22, 18-27-410.23, 18-27-410.24, 18-27-240.27, 18-27-410.36, 18-27-410.37, 18-27-410.38, 18-27-410.39)				
LIGHT FIXTURES ARE MISSING GLOBES (911-909 FRONT STAIRWELL)				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	CN076054: CONNECT DOWNSPOUT TO SEWER
Failed to connect downspout to sanitary sewer. (18-29-1101)				
CONNECT DOWN SPOUT TO SEWER NORTH EAST CORNER & NORTH END OF BUILDING				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	CN065014: REPAIR LINTELS
Failed to maintain lintel in good repair and free from cracks and defects. (13-196-530(e), 13-196-641)				
ALL ELEVATION ALL LEVEL LINTEL RUSTED				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	CN190019: ARRANGE PREMISE INSPECTION
Arrange for inspection of premises. (13-12-100)				
ARRANGE INTERIOR INSPECTION				
909 E 50TH ST	STF_COMPL	STF	02/19/2008	EL0023: INSTALL COVERS
Install cover on outlet or junction box. (18-27-370-25)				
EAST EXTERIOR MISSING LB COVER				
909 E 50TH ST	BLDG_PERM	CN_ANNUAL	08/26/2013	CN104015: REPLCE WINDOW PANES, PLEXGLAS
Replace broken, missing or defective window panes. (13-196-550 A)				
Northeast corner basement window - broken window pane.				
909 E 50TH ST	BLDG_PERM	CN_ANNUAL	08/26/2013	CN061014: REPAIR EXTERIOR WALL
Failed to maintain the exterior walls of a building or structure free from holes, breaks, loose or rotting boards or timbers and any other conditions which might admit rain or dampness to the walls. (13-196-530(b), 13-196-641)				
West elevation, entryway stones at 5001 S./ and 5005 S./ - open mortar joints.				

Total records: 27

Open Violations for 5001 - 5001 S DREXEL AVE

Address	App.Type	Insp.Type	Viol. Date	Violation Description
909 E 50TH ST	BLDG_PERM	CN_ANNUAL	08/26/2013	CN196029: POST OWNER/MANAGERS NAME/# Post name, address, and telephone of owner, owner's agent for managing, controlling or collecting rents, and any other person managing or controlling building conspicuously where accessible or visible to public way. (13-12-030) Owner's ID, sign - missing mailing address.
909 E 50TH ST	BLDG_PERM	CN_ANNUAL	08/26/2013	CN198019: FILE BLDG REGISTRATION File building registration statement with Building Dept. (13-10-030, 13-10-040) Building not registered years 20012 and 2013.
909 E 50TH ST	BLDG_PERM	CN_ANNUAL	08/26/2013	CN076044: REPAIR DOWNSPOUT Failed to maintain roof downspouts in good repair and working condition. (13-196-590, 13-196-630(b), 13-196-641, 18-29-1101, 18-29-1105, 18-29-1106) North downspouts - smashed.
909 E 50TH ST	BLDG_PERM	CN_ANNUAL	08/26/2013	CN066034: REPAIR BALCONY Failed to maintain balcony in good repair and free from cracks and defects. (13-196-530(e), 13-196-641) West balconys at 5001 S./ 2nd floor and 5005 S./ 1st floor - peeling paint and missing aluminum panels.
5001 S DREXEL BLVD	CN_COMPL	CN_COMPL	11/16/2005	CN046013: UNAPPROVED HEATING DEVICE Stop using cooking or water heating device as heating device. (13-196-400) STOVE IN USE AT TIME OF INSPECTION 5001 APARTMENT #106
5001 S DREXEL BLVD	CN_COMPL	CN_COMPL	11/16/2005	PL154027: SUPPLY HOT WTR MIN TEMP 120DEG Supply adequate hot water with minimum temperature of 120 degrees F. (13-196-430) NO HOT WATER- HOT WATER TANK DISCONNECTED BY PEOPLES GAS CO.ON 10-19-05; TICKET #874797
5001 S DREXEL BLVD	CN_COMPL	CN_COMPL	11/16/2005	CN132016: HEAT UNIT ADEQUATELY Heat dwelling unit adequately from September 15th to June 1st. (13-196-410) NO HEAT- 5001 APARTMENT 106; HEATING SYSTEM DISCONNECTED BY PEOPLES GAS CO. ON 10-19-05 DUE TO IMPROPER INSTALLATION;TICKET #874798;APARTMENT TEMPERATURE 51 DEGREES AT TIME OF INSPECTION
5001 S DREXEL BLVD	CN_COMPL	CN_COMPL	12/24/2007	CN104075: WINDOW REPAIR FOR AIR SEEPAGE Failed to maintain windows in relation to the adjacent wall construction as to completely exclude rain and substantially exclude wind from entering the premises. (13-196-550(f)) apt 305 cild air penetration windows at interior are covered with plastic traps
5001 S DREXEL BLVD	CN_COMPL	CN_COMPL	12/24/2007	CN046013: UNAPPROVED HEATING DEVICE Stop using cooking or water heating device as heating device. (13-196-400) apt305 utilizing cooking device for heat
5001 S DREXEL BLVD	CN_COMPL	CN_COMPL	12/24/2007	CN132016: HEAT UNIT ADEQUATELY Heat dwelling unit adequately from September 15th to June 1st. (13-196-410) apt 305 heating system is on and circulating cool air. thermostat is set at 79f
917 E 50TH ST	CN_COMPL	CN_COMPL	12/06/2013	CN070024: REPAIR PORCH SYSTEM Failed to repair or replace defective or missing members of porch system. (13-196-570, 13-196-641) rear porches built with 2006 permit 100098107. reinforce stringers and bolt to columns and landings. replace rusted and deteriorated gaurdrail brackets and joist hangers. replace cracked treads. replace cracked loose rails at rail sections. no permit required for hardware upgrade and maintenance repairs
917 E 50TH ST	CN_COMPL	CN_COMPL	12/06/2013	PL160017: REMV OBSTR FROM DRAINAGE SYSTM Remove obstruction from plumbing and drainage system. (13-168-120), (18-29-102.3) bathroom sink will not drain

Total records: 27

Open Violations for 5001 - 5001 S DREXEL AVE

Address	App.Type	Insp.Type	Viol. Date	Violation Description
917 E 50TH ST	CN_COMPL	CN_COMPL	12/06/2013	CN197019: INSTALL SMOKE DETECTORS
Install and maintain approved smoke detectors. (13-196-100 thru 13-196-160) Install a smoke detector in every dwelling unit. Install one on any living level with a habitable room or unenclosed heating plant, on the uppermost ceiling of enclosed porch stairwell, and within 15 feet of every sleeping room. Be sure the detector is at least 4 inches from the wall, 4 to 12 inches from the ceiling, and not above door or window. missing				
917 E 50TH ST	CN_COMPL	CN_COMPL	12/06/2013	CN197087: CARB MONOX DETECT IN RESID
Install carbon monoxide detector within 40 feet of every sleeping room in residential structure. (13-64-190, 13-64-210) A carbon monoxide detector is needed whenever there is a heating appliance on the premises that burns fossil fuel such as gas, oil, or coal, or air that is circulated through a heat exchanger. Install according to manufacturer instructions. A hard wired model requires an electrical wiring permit. In a single family residence, be sure the detector is on or below the lowest floor with a place to sleep. In a multiple dwelling residence heated by a boiler, install a detector in the same room as the boiler. Otherwise, each apartment follows single family guidelines. The owner is responsible for installation and written instructions, the tenant for testing, maintenance, and batteries. missing				

Total records: 27

EXHIBIT A

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, the following terms have the respective meanings given to them in this Exhibit A.

"30/360 Basis" shall mean on the basis of a 360-day year consisting of 12 months of 30 days each.

"Account Collateral" shall mean (i) the Accounts, and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Accounts from time to time; (ii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; and (iii) to the extent not covered by clauses (i) - (ii) above, all "proceeds" (as defined under the UCC as in effect in the state in which the Accounts are located) of any or all of the foregoing.

"Accounts" shall mean the Tax Account, the Insurance Account, the Replacement Reserve Account, the Immediate Repair Account and any other account established by this Agreement or the other Loan Documents.

"Actual/360 Basis" shall mean on the basis of a 360-day year and charged on the basis of actual days elapsed for any whole or partial month in which interest is being calculated.

"Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, owns more than 20% of, is in control of, is Controlled by or is under common ownership or 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 managing agent of the Property in which Borrower, Guarantor or any Affiliate of such Person(s) has, directly or indirectly, any legal, beneficial or economic interest.

"ALTA" shall mean American Land Title Association, or any successor thereto.

"Alteration Threshold" shall mean an amount equal to 2% of the outstanding principal balance of the Loan.

"Annual Budget" shall have the meaning set forth in Section 6.10(a)(iii).

"Applicable Law" shall mean all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting Borrower or the 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, including, without limitation, the Americans with Disabilities Act of 1990, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower or the Property or any part thereof, including, without limitation, any which may (i) require repairs, modifications or alterations in or to the Property or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

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

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

"**Award**" shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy", as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors' rights.

"**Borrower Party**" shall mean any Person acting on behalf of or at the direction of Borrower and/or Guarantor.

"**Business Day**" shall mean any day other than a Saturday, Sunday or any other day on which commercial banks in the State of North Carolina are not open for business.

"**Casualty**" shall mean any damage or destruction of the Property, in whole or in part.

"**Casualty Consultant**" shall have the meaning set forth in Section 9.4(b)(iii).

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

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

"**Condemnation Net Proceeds**" shall mean any Net Proceeds relating to any Condemnation.

"**Control**" shall mean the power to direct or cause the direction of the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities or other beneficial interests or management authority, in each case, by contract or otherwise.

"**CPI**" shall mean "The Consumer Price Index (New Series) (Base Period 1982-84=100) (all items for all urban consumers)" issued by the Bureau of Labor Statistics of the United States Department of Labor (the "**Bureau**"). If the CPI ceases to use the 1982-84 average equaling 100 as the basis of calculation, or if a change is made in the term, components or number of items contained in said index, or if the index is altered, modified, converted or revised in any other way, then the index shall be adjusted to the figure that would have been arrived at had the change in the manner of computing the index in effect at the Closing Date not been made. If at any time during the term of the Loan the CPI shall no longer be published by the Bureau, then any comparable index issued by the Bureau or similar agency of the United States issuing similar indices shall be used in lieu of the CPI.

"**Creditors Rights Laws**" shall mean any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

"**DBRS**" shall mean DBRS, Inc.

"**Debt**" shall mean the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums due to Lender at any time under the Loan Documents.

"**Debt Service**" shall mean, with respect to any particular period of time, scheduled principal and/or interest payments under the Loan.

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

"**Default Rate**" shall mean, with respect to the Loan, a rate per annum equal to the lesser of (i) the Maximum Legal Rate or (ii) the sum of (a) the Interest Rate and (b) 5%.

"**Defeasance Approval Item**" shall have the meaning set forth in Section 2.8(e).

"**Defeasance Collateral Account**" shall have the meaning set forth in Section 2.8(c).

"**Defeasance Lockout Release Date**" shall mean the earlier to occur of (i) the 4th anniversary of the first Monthly Payment Date and (ii) the date that is 2 years from the "startup day" (within the meaning of Section 860G(a)(9) of the IRS Code) of the REMIC Trust established in connection with the last Securitization involving any portion of or interest in the Loan.

"**Disclosure Document**" shall have the meaning set forth in Section 11.2(a).

"**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 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 (a) a depository institution or trust company insured by the Federal Deposit Insurance Corporation, (i) the short term unsecured debt obligations or commercial paper of which are rated at least "A-1+" (or its equivalent) from each of the Rating Agencies in the case of accounts in which funds are held for 30 days or less and (ii) the senior unsecured debt obligations of which are rated at least "A" (or its equivalent) from each of the Rating Agencies in the case of accounts in which funds are held for more than 30 days or (b) such other depository institution otherwise approved by the Rating Agencies from time-to-time.

"**Embargoed Person**" shall have the meaning set forth in Section 5.20.

"**Environmental Indemnity**" shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for Lender's

benefit, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Environmental Laws" shall have the meaning set forth in the Environmental Indemnity.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may heretofore have been or may hereafter be amended, restated, replaced or otherwise modified.

"ERISA Affiliate" shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with Borrower, are treated as a single employer under any or all of Sections 414(b), (c), (m) or (o) of the IRS Code.

"Event of Default" shall have the meaning set forth in Section 10.1.

"Exchange Act" shall have the meaning set forth in Section 11.2(a).

"Exchange Act Filing" shall mean any filing under or pursuant to the Exchange Act in connection with or relating to a Securitization.

"Exculpated Parties" shall have the meaning set forth in Section 3.1(a).

"Fitch" shall mean Fitch, Inc.

"Flood Insurance Acts" shall have the meaning set forth in Section 9.1(a)(vii).

"GAAP" shall mean generally accepted accounting principles in the United States of America established by the Financial Accounting Standards Board or successor authority on Standards approved by the American Institute of Certified Public Accountants as of the date of the applicable financial report.

"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.

"Guarantor" shall mean, individually and/or collectively (as the context may require), Alex Samoylovich, an individual, and Jay Michael, an individual.

"Guaranty" shall mean that certain Guaranty of Recourse Obligations executed by Guarantor and dated as of the date hereof.

"Hazardous Substances" shall have the meaning set forth in the Environmental Indemnity.

"Immediate Repair Account" shall have the meaning set forth in Section 4.1.

"Immediate Repair Funds" shall have the meaning set forth in Section 4.1.

"Immediate Repairs" shall have the meaning set forth in Section 4.1.

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

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

"Indemnified Parties" shall mean (a) Lender, (b) any successor owner or holder of the Loan or participations in the Loan, (c) any Servicer or prior Servicer of the Loan, (d) any Investor or any prior Investor in any Securities, (e) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any Investor or other third party, (f) any receiver or other fiduciary appointed in a foreclosure or other Creditors Rights Laws proceeding, (g) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries of any and all of the foregoing, and (h) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business) in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

"Insurance Account" shall have the meaning set forth in Section 4.5.

"Insurance Premiums" shall have the meaning set forth in Section 9.1(b).

"Interest Accrual Period" shall mean the period beginning on the first day of each calendar month during the term of the Loan and ending on (but including) the last day of such calendar month.

"Interest Rate" shall mean a rate per annum equal to five and three tenths percent (5.30%).

"Interest Shortfall" shall mean, with respect to any prepayment received by Lender on a date other than a Monthly Payment Date, the amount of interest which would have accrued thereon to the next Monthly Payment Date.

"Investor" shall mean any investor or potential investor in the Loan (or any portion thereof or interest therein) in connection with a Securitization.

"IRS Code" shall mean the Internal Revenue Code of 1986, as amended from time to time or any successor statute.

"Kroll" shall mean Kroll Bond Rating Agency, Inc.

"Land" shall have the meaning set forth in the Security Instrument.

"Lease" shall mean any and all leases, subleases, rental agreements and other agreements whether or not in writing providing for the use, enjoyment or occupancy of the Land and/or the Improvements now existing or hereafter entered into and all extensions, amendments and modifications thereto before or after the filing by or against Borrower of any petition for relief under Creditors Rights Laws.

"**Lease Event**" shall have the meaning set forth in Section 6.11(c).

"**Lease Event Payment**" shall have the meaning set forth in Section 6.11(c).

"**Liabilities**" shall have the meaning set forth in Section 11.2(b).

"**Licenses**" shall have the meaning set forth in Section 5.9(a).

"**Loan**" shall mean the loan made by Lender to Borrower pursuant to this Agreement.

"**Loan Documents**" shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment, the Environmental Indemnity, the Assignment of Management Agreement, the Guaranty and all other documents executed and/or delivered in connection with the Loan.

"**Losses**" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities and any impairment of Lender's security for the Loan), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense).

"**Major Lease**" shall mean (i) any Lease which, individually or when aggregated with all other Leases with the same Tenant or its Affiliate, either (A) accounts for 20% or more of the Property's total rental income, or (B) demises 20% or more of the Property's gross leasable area, (ii) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property and (iii) any instrument guaranteeing or providing credit support for any Lease meeting the requirements of (i) and/or (ii) above.

"**Management Agreement**" shall mean the management agreement entered into by and between Borrower and the current Manager or any replacement management agreement entered into by and between Borrower and any Manager in accordance with the terms hereof and of the other Loan Documents, pursuant to which Manager is to provide management and other services with respect to the Property.

"**Manager**" shall mean Flats, LLC, an Illinois limited liability company, or such other entity selected as the manager of the Property in accordance with the terms of this Agreement or the other Loan Documents.

"**Material Adverse Effect**" shall mean a material adverse effect on (i) the Property, (ii) the business, profits, prospects, management, operations or condition (financial or otherwise) of Borrower, Guarantor or the Property, (iii) the enforceability, validity, perfection or priority of the lien of the Security Instrument or the other Loan Documents, (iv) Borrower's ability to perform its obligations under the Security Instrument or the other Loan Documents or (v) the ability of Guarantor to perform its obligations under the Guaranty.

"**Material Agreements**" shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property, other than the Management Agreement and the Leases, as to which either (i) there is an obligation of Borrower to pay more than \$25,000.00 per annum; or (ii) the term thereof extends beyond 1 year (unless cancelable on 30 days or less notice without requiring the payment of termination fees or payments of any kind).

"Material Alteration" shall mean any alteration affecting the Property (a) the cost of which exceeds the Alteration Threshold or (b) which adversely affects any material structural components of the Improvements or any major building system, including, without limitation, any HVAC system; provided, however, in no event shall (i) any Immediate Repairs, (ii) any tenant improvement work performed pursuant to any Lease approved by Lender, or (iii) alterations performed as part of a Restoration in accordance with Section 9.4, constitute a Material Alteration.

"Maturity Date" shall mean May 1, 2024, or such other date on which the final payment of principal of the Note becomes due and payable, whether at such stated maturity date, by declaration of acceleration, or otherwise.

"Maximum Legal Rate" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided in the 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.

"Minimum Disbursement Amount" shall mean \$5,000.

"Monthly Debt Service Payment Amount" shall mean (i) for the Monthly Payment Date occurring in June, 2014 and for each Monthly Payment Date occurring thereafter up to and including the Monthly Payment Date occurring in May, 2015, a payment equal to the amount of interest which has accrued during the preceding Interest Accrual Period computed at the Interest Rate, and (ii) for the Monthly Payment Date occurring in June, 2015 and for each Monthly Payment occurring thereafter, a constant monthly payment of \$12,772.01.

"Monthly Insurance Deposit" shall have the meaning set forth in Section 4.5.

"Monthly Payment Date" shall mean the 1st day of every calendar month occurring during the term of the Loan.

"Monthly Tax Deposit" shall have the meaning set forth in Section 4.5.

"Moody's" shall mean Moody's Investor Service, Inc.

"Morningstar" shall mean Morningstar, Inc.

"Net Proceeds" shall mean the net amount of all insurance proceeds payable as a result of a Casualty to the Property or of the Award, after deduction of reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees), if any, in collecting such insurance proceeds or Award.

"Net Proceeds Deficiency" shall have the meaning set forth in Section 9.4(b)(vi).

"New Manager" shall have the meaning set forth in Section 6.12(b).

"Non-Conforming Policy" shall have the meaning set forth in Section 9.1(i).

"Note" shall mean that certain Promissory Note of even date herewith in the principal amount of \$2,300,000.00, made by Borrower in favor of Lender, as the same may be amended, restated, replaced, extended, renewed, supplemented, severed, split, or otherwise modified from time to time.

"OFAC" shall have the meaning set forth in Section 5.20.

"Officer's Certificate" shall mean a certificate delivered to Lender by Borrower which is signed by Responsible Officer of Borrower.

"Open Period Start Date" shall mean the Monthly Payment Date occurring 3 months prior to the Maturity Date.

"Other Charges" shall mean all maintenance charges, impositions other than Taxes, and any other charges, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

"Other Obligations" has the meaning given to that term in the Security Instrument and, without limiting the scope thereof, means all of the following other than payment of the Debt: (a) all of Borrower's obligations under the Security Instrument; (b) each of Borrower's obligations contained in this Agreement and/or any other Loan Document; and (c) each of Borrower's obligations contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

"Patriot Act" shall have the meaning set forth in Section 5.21.

"Permitted Encumbrances" shall mean collectively, (a) the lien and security interests created by this Agreement and the other Loan Documents, (b) all liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's sole discretion.

"Permitted Equipment Leases" shall mean equipment leases or other similar instruments entered into with respect to the Personal Property; provided, that, in each case, such equipment leases or similar instruments (i) are entered into on commercially reasonable terms and conditions in the ordinary course of Borrower's business and (ii) relate to Personal Property which is (A) used in connection with the operation and maintenance of the Property in the ordinary course of Borrower's business and (B) readily replaceable without material interference or interruption to the operation of the Property.

"Permitted Equity Transfer" shall have the meaning set forth in Section 8.2.

"Permitted Property Transfer" shall have the meaning set forth in Section 8.3.

"Permitted Transfer" shall mean (i) a Permitted Equity Transfer, (ii) a Permitted Property Transfer, (iii) a Lease entered into in accordance with the terms hereof, (iv) any Permitted Encumbrance, and/or (v) any Permitted Equipment Leases.

"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 Security Instrument.

"Policies" shall have the meaning specified in Section 9.1(b).

"Prior Lender" shall mean FirstMerit Bank, N.A.

"Prior Loan" shall mean that certain loan in the original principal amount of \$1,890,000.00 given by Prior Lender to Borrower on or about November 30, 2011.

"Prohibited Transfer" shall have the meaning set forth in Section 8.1(a).

"Property" shall have the meaning set forth in the Security Instrument.

"Provided Information" shall have the meaning set forth in Section 11.2(b).

"Prudent Lender Standard" shall, with respect to any matter, be deemed to have been met if the matter in question (i) prior to a Securitization, is reasonably acceptable to Lender and (ii) after a Securitization, would be acceptable to a prudent lender of securitized commercial mortgage loans.

"Qualified Insurer" shall have the meaning set forth in Section 9.1(b).

"Qualified Leasing Expenses" shall mean actual, out-of-pocket expenses incurred by Borrower in leasing space at the Property pursuant to Leases entered into in accordance with the terms hereof, including brokerage commissions and tenant improvements, which expenses (a)(i) in connection with Leases which require Lender's approval under the Loan Documents, are specifically approved by Lender, (ii) in connection with Leases which do not require Lender's approval under the Loan Documents, are incurred in the ordinary course of business and are on market terms and conditions, or (iii) are otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed, and (b) are substantiated by executed Lease documents and/or brokerage agreements. With respect to Qualified Leasing Expenses pursuant to clauses (ii) and (iii) above, Lender shall have received and approved a budget for such tenant improvement costs and a schedule of leasing commissions payments payable in connection with any Qualified Leasing Expenses.

"Qualified Manager" shall mean a reputable and experienced professional management organization approved by Lender (which such approval may, at Lender's option, be conditioned upon Lender's receipt of a Rating Agency Confirmation with regard to both the identity of the proposed manager and the replacement management agreement pursuant to which such manager will be employed).

"Rating Agencies" shall mean each of S&P, Moody's, Fitch, DBRS, Kroll and Morningstar, or any successor thereto, or any other nationally-recognized statistical rating agency which has been approved by Lender, but only to the extent that such Rating Agency has been designated by Lender, or is anticipated to be designated by Lender, in connection with any Secondary Market Transaction.

"Rating Agency Confirmation" shall mean a written affirmation from each of the Rating Agencies (obtained at Borrower's sole cost and expense) that the credit rating of the Securities by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. For the purposes of this Agreement and the other Loan Documents, if any Rating Agency shall waive, decline or refuse to review or otherwise engage any request for a Rating Agency Confirmation hereunder or under the other Loan Documents (hereinafter, a **"RA Consent"**), such RA Consent shall be deemed to eliminate, for such request only, the condition that a Rating Agency Confirmation by such Rating Agency (only) be obtained for purposes of this Agreement or the other Loan Documents, as applicable; provided, however, if Lender does not have a separate and independent approval right with respect to such event set forth herein or in the other Loan Documents, as applicable,

then the term **"Rating Agency Confirmation"** shall be deemed instead to require the approval of Lender based on its good faith determination. For purposes of clarity, any such waiver, declination or refusal to review or otherwise engage in any request for a Rating Agency Confirmation hereunder or under the other Loan Documents shall not be deemed a waiver, declination or refusal to review or otherwise engage in any subsequent request for a Rating Agency Confirmation hereunder or under the other Loan Documents, and the condition for Rating Agency Confirmation pursuant to this Agreement and the other Loan Documents for any subsequent request shall apply regardless of any previous waiver, declination or refusal to review or otherwise engage in such prior request.

"REA" shall mean, individually and/or collectively (as the context may require), each reciprocal easement, covenant, condition and restriction agreement or similar agreement affecting the Property and any future reciprocal easement or similar agreement affecting the Property.

"Registrar" shall have the meaning set forth in Section 11.4.

"Registration Statement" shall have the meaning set forth in Section 11.2(b).

"Regulation AB" shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended, modified or replaced from time to time.

"REMIC Requirements" shall mean any applicable federal income tax requirements relating to the continued qualification of any REMIC Trust (including, without limitation, the continued treatment of the Loan as a "qualified mortgage" in the hands of the REMIC Trust) as such under the IRS Code, the non-imposition of any tax on such REMIC Trust under the IRS Code (including, without limitation, the taxes on "prohibited transactions" and "contributions"), and any other constraints, rules or other regulations or requirements relating to the servicing, modification or other similar matters with respect to the Loan (or any portion thereof or interest therein) that may exist in, or be promulgated administratively under, the IRS Code.

"REMIC Trust" shall mean a "real estate mortgage investment conduit" within the meaning of Section 860D of the IRS Code that holds any interest in all or any portion of the Loan (including, without limitation, the Note).

"Renovation Reserve Account" shall have the meaning set forth in Section 4.6.

"Renovation Reserve Funds" shall have the meaning set forth in Section 4.6.

"Rent Loss Proceeds" shall have the meaning set forth in Section 9.1(a)(iii).

"Rent Roll" shall mean a rent roll reflecting all premises within the Property, all Tenants thereof and containing such other basic information as Lender may require.

"Rents" shall have the meaning set forth in the Security Instrument.

"Replacement Reserve Account" shall have the meaning set forth in Section 4.2.

"Replacement Reserve Funds" shall have the meaning set forth in Section 4.2.

"Replacement Reserve Monthly Deposit" shall have the meaning set forth in Section 4.2.

"Replacements" for any period shall mean amounts expended for replacements and/or alterations to the Property and required to be capitalized according to GAAP and reasonably approved by Lender.

"Reporting Failure" shall have the meaning set forth in Section 6.10(c).

"Required Financial Item" shall have the meaning set forth in Section 6.10(c).

"Reserve Funds" shall mean the Tax and Insurance Funds, the Replacement Reserve Funds, the Immediate Repair Funds and any other escrow funds established by this Agreement or the other Loan Documents.

"Reserve Work" shall have the meaning set forth in Section 4.4.

"Responsible Officer" shall mean with respect to a Person, the chairman of the board, president, chief operating officer, chief financial officer, treasurer or vice president-finance of such Person or such other similar officer of such Person reasonably acceptable to Lender and appropriately authorized by the applicable Person in a manner reasonably acceptable to Lender.

"Restoration" shall mean the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to the applicable Casualty as reasonably approved by Lender.

"Restoration Retainage" shall have the meaning set forth in Section 9.4(b)(iv).

"Restoration Threshold" shall mean the lesser of (i) \$100,000 or (ii) 5% of the outstanding principal balance of the Loan.

"Restricted Party" shall mean Borrower, Guarantor, any Affiliated Manager, or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, Guarantor, any Affiliated Manager or any non-member manager.

"Sale or Pledge" shall mean a voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) a legal or beneficial interest.

"Satisfactory Replacement Guarantor" shall have the meaning set forth in Section 23 of the Guaranty.

"Scheduled Defeasance Payments" shall mean scheduled payments of interest and principal under the Note for all Monthly Payment Dates occurring after the Total Defeasance Date and up to and including the Open Period Start Date (including the outstanding principal balance on the Note as of the Open Period Start Date), and all payments required after the Total Defeasance Date, if any, under the Loan Documents for servicing fees, rating surveillance charges (to the extent applicable) and other similar charges.

"Secondary Market Transaction" shall have the meaning set forth in Section 11.1(a).

"Securities" shall have the meaning set forth in Section 11.1(a).

"Securities Act" shall have the meaning set forth in Section 11.2(a).

"**Securitization**" shall have the meaning set forth in Section 11.1(a).

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

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

"**Servicer**" shall mean any servicer/trustee selected by Lender to service the Loan.

"**Severed Loan Documents**" shall have the meaning set forth in Section 10.2(d).

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

"**Single Purpose Entity**" shall mean an entity which satisfies all of the requirements of Section 7.1 hereof and whose structure and organizational and governing documents are otherwise in form and substance acceptable to Lender and the Rating Agencies.

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

"**State**" shall mean the state in which the Property or any part thereof is located.

"**Successor Borrower**" shall have the meaning set forth in Section 2.8(d).

"**Survey**" shall mean that certain survey, dated April 2, 2014, prepared by Moradi Multi Dimensions Consulting Engineers and provided to Lender in connection with the closing of the Loan.

"**Tax Account**" shall have the meaning set forth in Section 4.5.

"**Tax and Insurance Funds**" shall have the meaning set forth in Section 4.5.

"**Taxes**" shall mean all taxes, assessments, water rates, sewer rents, business improvement district or other similar assessments and other governmental impositions, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof.

"**Tenant**" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property under a Lease or other occupancy agreement with Borrower.

"**Title Insurance Policy**" shall mean that certain ALTA mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Security Instrument.

"**Total Defeasance Collateral**" shall mean U.S. Obligations, which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all Monthly Payment Dates and other scheduled payment dates, if any, under the Note after the Total Defeasance Date and up to and including the Open Period Start Date, and (ii) in amounts equal to or greater than the Scheduled Defeasance Payments relating to such Monthly Payment Dates and other scheduled payment dates.

"**Total Defeasance Date**" shall have the meaning set forth in Section 2.8(a).

"**Total Defeasance Event**" shall have the meaning set forth in Section 2.8(a).

"**UCC**" or "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in the State.

"**Underwriter Group**" shall have the meaning set forth in Section 11.2(b).

"**Units**" shall have the meaning set forth in Section 4.6.

"**U.S. Obligations**" shall mean "government securities" as defined in Section 2(a)(16) of the Investment Company Act of 1940 and within the meaning of Treasury Regulation Section 1.860G-2(a)(8); provided, that, (i) such "government securities" are not subject to prepayment, call or early redemption, (ii) to the extent that any REMIC Requirements require a revised and/or alternate definition of "government securities" in connection with any defeasance hereunder, the foregoing shall be deemed amended in a manner commensurate therewith and (iii) the aforesaid laws and regulations shall be deemed to refer to the same as may be and/or may hereafter be amended, restated, replaced or otherwise modified.

"**Wells Fargo**" shall mean Wells Fargo Bank, National Association.

"**Wells Group**" shall have the meaning set forth in Section 11.2(b).

"**Work Charge**" shall have the meaning set forth in Section 6.13(a).

"**Yield Maintenance Premium**" shall mean an amount equal to the greater of: (a) an amount equal to 1% of the amount prepaid; or (b) an amount equal to (i) the amount, if any, by which the sum of the present values as of the prepayment date of all unpaid principal and interest payments required hereunder, calculated by discounting such payments from the respective dates each such payment was due hereunder (or, with respect to the payment required on the Open Period Start Date, from the Open Period Start Date) back to the prepayment date at a discount rate equal to the Periodic Treasury Yield (defined below) exceeds the outstanding principal balance of the Loan as of the prepayment date, *multiplied* by (ii) a fraction whose numerator is the amount prepaid and whose denominator is the outstanding principal balance of the Loan as of the prepayment date. For purposes of the foregoing, "**Periodic Treasury Yield**" shall mean (y) the annual yield to maturity of the actively traded non-callable United States Treasury fixed interest rate security (other than any such security which can be surrendered at the option of the holder at face value in payment of federal estate tax or which was issued at a substantial discount) that has a maturity closest to (whether before, on or after) the Open Period Start Date (or if two or more such securities have maturity dates equally close to the Open Period Start Date, the average annual yield to maturity of all such securities), as reported in The Wall Street Journal or other authoritative publication or news retrieval service on the fifth Business Day preceding the prepayment date, *divided by* (z) 12. Lender's calculation of the Yield Maintenance Premium, and all component calculations, shall be conclusive and binding on Borrower absent manifest error.

